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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 73-1361

FRED BALDRIDGE, TRAVIS W. TAYLOR and HERMAN D. TERRY,

Petitioners,

vs.

JOHN R. HADLEY, J. D. MONTOYA and ED GARY, individually and as members of THE NEW MEXICO STATE AGRICULTURAL STABILIZATION and CONSERVATION COMMITTEE; and CLIFFORD M. HARDIN as Secretary of Agriculture of the United States, COMMODITY CREDIT CORPORATION,

Respondents,

and

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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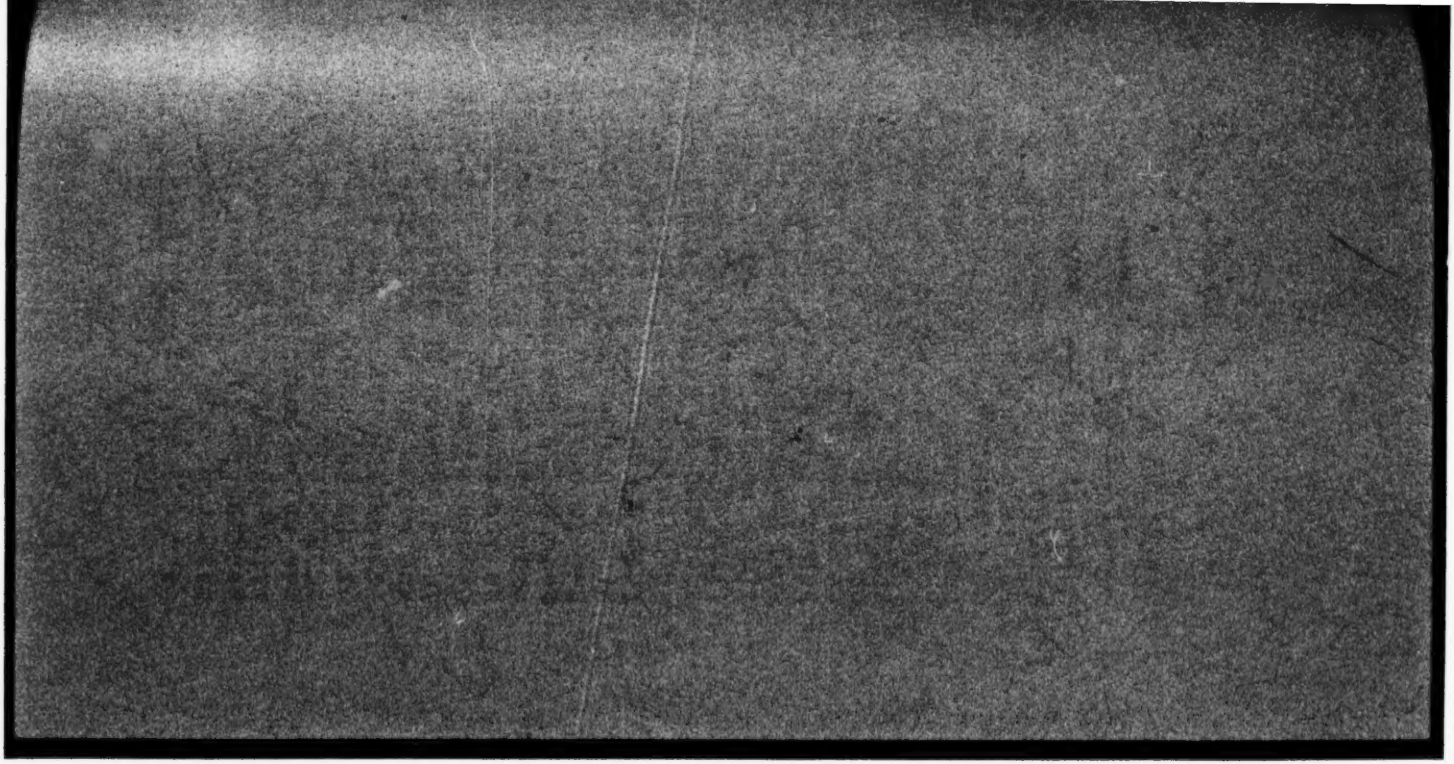

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No.

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JOHN R. HADLEY, J. D. MONTOYA and ED GARY, individually and as members of THE NEW MEXICO STATE AGRICULTURAL STABILIZATION and CONSERVATION COMMITTEE; and CLIFFORD M. HARDIN as Secretary of Agriculture of the United States, COMMODITY CREDIT CORPORATION,

Respondents,

and

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Fred Baldridge, Travis W. Taylor, and Herman D. Terry, pray that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Tenth Circuit, entered in this case on January 9, 1974. Petition for rehearing was denied on January 30, 1974.

OPINIONS BELOW

The Judgment of the United States District Court for the District of New Mexico was accompanied by a Memorandum Opinion, which has not been reported, and is printed in Attachment 1 hereto. The opinion of the Court of Appeals for the Tenth Circuit, which affirmed the District Court Judgment, has not been reported but is printed in Attachment 2 hereto.

JURISDICTION

The Judgment of the Court of Appeals sought to be reviewed was entered January 9, 1974. Rehearing was denied January 30, 1974. The Court of Appeals stayed its mandate until March 16, 1974, by Order dated February 14, 1974.

The jurisdiction of the Court is invoked under 28 U.S.C. §2101(c).

QUESTIONS PRESENTED

1. Whether the courts can ignore the Rules of Decision Act, 28 U.S.C. §1652, and all precedent both before and after Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, 114 A.L.R.

487 (1938), and further ignore the consistent administrative application of state real property law by the Department of Agriculture as approved in H.R. Hearings Before the Subcomm. of the Comm. on Appropriations, 86th Cong., 1st Sess. (1960), and 85th Cong., 2nd Sess. (1959), set forth in Attachments 9 and 10 hereto, in refusing to decide the ownership of New Mexico land solely under the real property law and allied evidentiary rules of New Mexico in determining the validity of Conservation Reserve Contracts executed pursuant to the Soil Bank Act, 7 U.S.C.A. §1801, et seq., and the regulations promulgated thereunder, 7 C.F.R. §750.150, et seq., and of a Cropland Adjustment Program contract executed pursuant to 7 U.S.C.A. §1838, et seq., and the regulations promulgated thereunder, 7 C.F.R. §751.101, et seq., so as to hold Fred Baldridge liable in fraud for $232,211.10 of Conservation Reserve Contract payments of which $203,660.10 was received under individual Conservation Reserve Program contracts of six (6) other persons and spent by them, and for $14,983.28 received by him alone under the Cropland Adjustment Program, as doubled plus $2,000, totaling $31,966.56 under the False Claims Act, 31 U.S.C. §231?

2. Whether under the deprivation of "life, liberty, or property, without due process of law" clause of the U. S. Const., amend. V, the United States courts can impose restraints and burdens singularly on Fred Baldridge to the extent of a personal judgment of $232,211.10 in the application of the Soil Bank Act,

7 U.S.C.A. §1801, et seq., and the regulations thereunder, 7 C.F.R. §750.150, et seq., which restraints and burdens are not imposed upon or borne by others in like circumstances as shown by H.R. Hearings Before the Subcomm. of the Comm. on Appropriations, 86th Cong., 1st Sess. (1960), and 85th Cong., 2nd Sess. (1959)?

3. Whether Congress created a right in and authorized the United States to recover $203,660.10 from Fred Baldridge, alone, the sum of all the various payments respectively received and spent by six (6) others in addition to $28,551.00 received by himself under their individual Conservation Reserve Program contracts authorized by the Soil Bank Act, 7 U.S.C.A. §1801, et seq., and the regulations thereunder, 7 C.F.R. §750.150, et seq., with respect to lands acquired and paid for in a manner approved by the Department of Agriculture and in H.R. Hearings Before the Subcomm. of the Comm. on Appropriations, 86th Cong., 1st Sess. (1960), and 85th Cong., 2nd Sess. (1959)?

4. Whether the Tenth Circuit can create a new definition of fraud absent proof and supported only by its own arbitrary and capricious conclusions so as to eliminate the necessity of clear and convincing evidence of (1) false representation of a material fact (2) knowledge of falsity when made (3) intent to deceive, and (4) resulting damage to the United States, all heretofore required under the settled rules of New Mexico law which

long ago adopted those of the Tenth Circuit, and so as to hold Fred Baldridge liable for all monies received and spent by others under Conservation Reserve Program contracts executed pursuant to the Soil Bank Act, 7 U.S.C.A. §1801, et seq., and its regulations, 7 C.F.R. §750.150, et seq., and under a Cropland Adjustment Program contract, executed pursuant to 7 U.S.C.A. §1838, et seq., and its regulations, 7 C.F.R. §751.101, et seq.?

5. Whether under the Soil Bank Act, 7 U.S.C.A. §1801, et seq., and regulations thereunder, 7 C.F.R. §750.150, et seq., in order to arrive at a result agreeable to them, the courts can ignore the obvious intent of the Congress, so as to erroneously interpret and apply the regulations in the following respects:

(1) Under 7 C.F.R. §750.164(a), if Fred Baldridge did not receive more than $5,000 in any one year, can the sums received by others be added to the sums received by him so as to put him in the position of having created a "scheme or device" and his having exceeded the maximum payment limitation of $5,000 in any one year?

(2) Under 7 C.F.R. §750.172(a) providing that if there is a violation of a Conservation Reserve Program contract, "all such payments and grants received by the producer shall be refunded with interest," can Fred Baldridge be required to refund money received and spent by other producers

or is it any concern of the United States where the monies went or who benefited from such monies?

(3) Under 7 C.F.R. §750.150(q), does a "producer" have to be anything other than an "owner", and under the hired labor provision of §750.150(v), does an owner have to live on the farm and personally farm it contrary to the practice approved in H.R. Hearings Before the Subcomm. of the Comm. on Appropriations, 86th Cong., 1st Sess. (1960), and 85th Cong., 2nd Sess. (1959)?

(4) Under 7 C.F.R. §750.164(b)(5), do the words "Other individuals having any family relationship may be considered as separate producers if they are participating on different farms prohibit persons related by blood or affinity from purchasing land and having it reconstituted as separate farms under 7 C.F.R. §750.159(b)?

(5) Under 7 C.F.R. §750.164(a), can the fact that Fred Baldridge contracted for the acquisition of land from other owners after the Conservation Reserve Program contracts were terminated legally result in his having created a "scheme or device" and legally result in his having exceeded the $5,000 annual maximum payment limitation?

(6) Under 7 C.F.R. §750.150, et seq., and its administration by the Department of Agriculture as approved in H.R. Hearings Before the Subcomm. of the Comm. on Appropriations, 86th Cong.,

1st Sess. (1960), and 85th Cong., 2nd Sess. (1959), is there any prohibition against Conservation Reserve Program payments paying for land regardless of the occupation or family relationship of the purchasers with the sellers?

(7) Under 7 C.F.R. §750.150, et seq., did the Congress intend there to be or could the Congress constitutionally impose a restriction on the alienation of land any different from that existing in New Mexico before the passage of the Soil Bank Act?

6. Under the Food and Agriculture Act of 1965, 7 U.S.C.A. §1838, et seq., and the regulations thereunder, 7 C.F.R. §751.101, et seq., is the ownership of New Mexico land to be determined solely under the real property law and allied evidentiary rules of New Mexico in determining the validity of Cropland Adjustment Program contracts or can the courts arbitrarily and capriciously use the False Claims Act, 31 U.S.C. §231, as a means to abrogate the New Mexico law?

STATUTES, FEDERAL RULES, AND REGULATIONS INVOLVED

The pertinent portions of the Soil Bank Act, 7 U.S.C.A. §1801, et seq., the regulations thereunder, 7 C.F.R. §750.150, et seq., and of the Food and Agriculture Act of 1965, 7 U.S.C.A. §1838, and the regulations thereunder, 7 C.F.R. §751.101, are set forth respectively in Appendix A, B, C, and D. Other statutes involved are the

False Claims Act, 31 U.S.C. §231, et seq., and 28 U.S.C. §1345. Amendment V of the United States Constitution as applied to deprivation of life, liberty, or property without due process of law is also considered.

STATEMENT

Robert Draper, then of Seagraves, Texas, owned a 4,320 acre farm in Lea and Roosevelt Counties, New Mexico, on which there was a first mortgage to Connecticut Mutual Life Insurance Co. with a balance owed of $40,000, a second lien to Farmers Home Administration of $61,000, a third lien to Amos Harper of $56,372, and a lien to Commodity Credit Corporation for some $4,000. Draper was in great financial difficulty and unable to meet his obligations. He had known Fred Baldridge's parents, T. E. and Montie Baldridge, since 1922, so he sought them out with the idea of selling the farm to members of the Baldridge family. T. E. Baldridge died May 9, 1960, after the purchases were completed. T. E and Montie Baldridge, and sometimes Fred Baldridge, contacted the following persons: (1) Travis W. Taylor, of Clovis, New Mexico, brother-in-law of Fred Baldridge, a general foreman for the Bridge & Building Water Service of the Santa Fe Railroad (2) Herman D. Terry, then of Abilene, Texas, brother-in-law of T. E. Baldridge, office manager of a plumbing and heating company (3) Thomas Fred Adams, now deceased, of Lubbock, Texas, a second cousin of T. E. Baldridge, an electrical contracting company employee (4) Henry Elwood

Baldridge, Jr., then of Garfield, Arkansas, nephew of T. E. Baldridge, then in the U. S. Navy and now an insurance inspector for a retail credit company (5) Sam L. Henderson, of Amarillo and Spearman, Texas, son-in-law of T. E. Baldridge, oil field production foreman (6) Fred Baldridge, of Curry County, New Mexico, son of T. E. Baldridge, farmer and livestockman. On March 3, 1958, Draper delivered a warranty deed for about 640 acres to each of the above named six (6) persons and each executed a note and mortgage to Draper, each of which provided for no deficiency judgment, payable in ten (10) equal annual installments with no interest, samples of which are attached to this Petition as Attachments 3 and 4. The warranty deeds and mortgages were recorded in the proper county clerk's office. Simultaneously, Draper executed a note to Fred Baldridge for $47,464.77 payable $3,312.11 annually with no interest.

Each of the purchasers then applied to the Lea County Agricultural Stabilization and Conservation Service Office, hereinafter called Lea Co. A.S.& C.S. Office, for Conservation Reserve Program contracts as authorized by the Soil Bank Act, 7 U.S.C.A. §1801, et seq., and the regulations thereunder, 7 C.F.R. §750.150, et seq. However, 7 C.F.R. §750.153 a. became effective December 3, 1957, and they were told to return in a year as they had to own it at least that long before it would be eligible.

In the late part of 1958 all of the purchasers appeared before the Lea Co.

A.S.& C.S. Committee and their requests were approved for Conservation Reserve Program, hereinafter referred to as C.R.P., contracts authorized by the Soil Bank Act, 7 U.S.C.A. §1801, et seq., and 7 C.F.R. §750.150, et seq. An example of the contract is attached to this Petition as Attachment 5. Each contract was for a ten (10) year period for annual payments to each of $3,684.00, $3,750.00, $4,402.30, $3,166.20, $2,935.80, and $4,984.90, if the money was appropriated to pay them as provided in 7 U.S.C.A. §1808(b). The Draper Farm having been earlier reconstituted into seven (7) farms under 7 C.F.R. §750.159, Draper kept what is known as Farm A-109, 625 acres, and also retained this farm in his original Conservation Reserve Contract dated November 20, 1956, making him receive originally $5,000 annually for the balance of the ten (10) year term.

The purchasers and Draper, anticipating approval and needing to make arrangements to comply with the C.R.P. contracts, between February 14 to 20, 1958, entered into identical but separate contracts with Fred Baldridge, an example is attached to this Petition as Attachment 6, providing as follows: (1) Each agrees to sell and Fred Baldridge to buy the surface rights to the land each had purchased from Robert Draper and in addition Robert Draper agrees to sell and Fred Baldridge to buy Farm A-109, which had been retained by Draper (2) The purchase price in each instance to be the performance by Fred Baldridge of all cultivation and seeding required for maximum payments under the

Conservation Reserve Program of the Soil Bank Act for the ten (10) year program commencing in 1959 with Fred Baldridge to receive all sums paid by the Department of Agriculture for cultivation and seeding (3) The Citizens Bank of Clovis was mutually designated as Escrow Agent with which warranty deeds from the purchasers and Draper's warranty deed as to Farm A-109, an example of the warranty deeds is attached to this Petition as Attachment 7, and the Contracts and purchase money notes, including Draper's $47,464.77 note to Fred Baldridge, were placed for collection (4) The Contracts, Attachment 6, authorized the Escrow Agent to deliver the warranty deeds to Fred Baldridge after all the C.R.P. contracts were completed, to-wit, on December 16, 1969, as to all deeds except as to Farm A-109, which was to be delivered on January 15, 1966, when Draper's C.R.P. contract expired.

At this 1958 meeting Fred Baldridge had all of these papers with him and asked Joe M. Peterson, the Lea Co. A.S.& C.S. Manager, if he would like to read them, but he declined to do so.

Each of the purchasers and Robert Draper received their respective C.R.P. contract payments, paid the Escrow Agent on their notes and complied fully with the requirements of the Lea Co. A.S.& C.S. Committee and the Department of Agriculture as to cultivation, seeding, grazing, and all related provisions required under the C.R.P. contracts.

The controversy about the Cropland Adjustment Program contract executed under 7 U.S.C.A. §1838, et seq., and its regulations, 7 C.F.R. §751.101, et seq., originated with the default of Sam Henderson on his note payment in 1965 to Robert Draper. Fred Baldridge's mother, Montie Baldridge, made this payment to the Escrow Agent. When it was ascertained that Henderson was not going to perform, Fred Baldridge without objection from Henderson and with the consent of the Escrow Agent, withdrew Henderson's deed from the escrow, simultaneously executed a deed to Robert Draper and recorded both deeds so as to make Draper's title good of record. Draper then obtained a modified C.R.P. contract on the Henderson land. It was discovered at this time that the deed from Draper to Fred Baldridge as to Farm A-109 was missing from the escrow. Fred Baldridge at this time became aware that Robert Draper was not using the money paid to him by his purchasers to satisfy the Connecticut Life Insurance Co. first mortgage as he had promised. Fred Baldridge reasoned that he needed some security for Draper's performance of this obligation, so he had a new deed drawn for and executed by Draper to both the Henderson land and Farm A-109 in which Fred Baldridge was the grantee which he held as security.

Early in 1966, at the suggestion of Troy Harris, then the Lea Co. A.S.& C.S. Manager, Draper and Fred Baldridge renegotiated their agreement with respect to Farm A-109 with the result that a cash Farm Lease was entered into for a

ten (10) year period with Draper, and Draper gave Fred Baldridge an option to buy Farm A-109. Since Draper had Farm A-109 in a modified C.R.P. contract, the lease with Fred Baldridge enabled him to put it in the Cropland Adjustment Program under 7 C.F.R. §§751.114, 751.118(b)(2)(xiii), 751.123, and 751.130. Fred Baldridge received one payment of $14,983.28.

Later in 1966 Fred Baldridge found that Draper was not paying the first mortgage, so he recorded this new deed. Still later in 1966 he deeded the Sam Henderson land to his mother who tried to put it in a C.R.P. contract but was refused. The remaining part of the land, Farm A-109, was retained by Fred Baldridge.

The C.R.P. contracts were terminated as to all six (6) purchasers after each had received his payments for the year 1967. A hearing was had before the New Mexico State A.S.& C.S. Committee which determined that Fred Baldridge should return $232,211.10 of which $203,660.10 was money he never received.

Fred Baldridge, Travis W. Taylor, and Herman D. Terry then petitioned for a trial de novo under 7 U.S.C.A. §1831(d). The District Court permitted the United States to intervene and a counterclaim was pleaded for recovery under the False Claims Act as to both the Conservation Reserve Program Contracts and the new issue of the Cropland Adjustment Program. The trial court entered judgment against Fred Baldridge alone for $232,211.10 plus interest of 6% from February 17, 1970,

despite the fact that $203,660.10 was not received by him, and the further amount of $31,966.56 representing $14,983.28 doubled plus $2,000 as provided in the False Claims Act.

REASONS FOR GRANTING THE WRIT

The decision below should be reviewed because it constitutes an arrogant, arbitrary, intentional, and capricious refusal of the Tenth Circuit and the District Court of New Mexico to follow the decisions of this court and those of the Tenth Circuit heretofore had in applying the New Mexico law of real property and evidence under the Rules of Decision Act, 28 U.S.C. §1652, and all precedent both before and after Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, 114 A.L.R. 1487 (1938), and the lower courts further refusal to follow this Court's decisions in Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 93 S.Ct. 2080 (1973), and Red Lion Broadcasting Co., Inc. v. F.C.C., 395 U.S. 367, 89 S.Ct. 1794, 23 L.Ed.2d 371 (1969), to the effect that where the Congress has refused to alter the administrative construction in the instant case placed upon the Soil Bank Act, 7 U.S.C.A. §1801, et seq., and its regulations, 7 C.F.R. §750.150, et seq., by the Department of Agriculture, the application of state law in all cases by that Department and approved in H.R. Hearings Before the Subcomm. of the Comm. on Appropriations, 86th Cong., 1st Sess. (1960), and 85th Cong., 2nd Sess (1959), necessitates and requires that New Mexico law be

applied here. The issues are of far-reaching importance in the relation of state to federal law and the administration of federal law with regard to the deprivation of "life, liberty, or property, without due process of law" clause of the U. S. Const., amend. V, as denying an honorable citizen equal protection of the law as a result of a singular and unique application of "some broadening omnipresence labeled federal common law."

I

Fred Baldridge and all the other purchasers from the inception of the sale by Robert Draper have relied upon the fundamental principle that a deed is not effective until delivered. The controlling New Mexico law on the subject is found in Mosley v. Magnolia Petroleum Co., 45 N.M. 230, 114 P.2d 740 (1941), an historic case where the Supreme Court of New Mexico, its highest court, held that:

> "It is the general rule that where a deed is executed and placed in escrow to be delivered upon a condition subsequent, it will be given effect as of the date of the final or effective delivery." (Emphasis Writer's)

New Mexico law is in accord with the overwhelming weight of authority. 48 A.L.R. 405; 54 A.L.R. 1246; 117 A.L.R. 69; 28 Am.Jur.2d, Escrow, §10, p.15; 30A C.J.S., Escrow, §9, p.993; 26 C.J.S., Deeds, §40, p.670;

23 Am.Jur.2d, Deeds, §79, p.132. This is to say that Fred Baldridge had no present estate or future interest in the land described in the escrowed deeds. The Restatement Law of Property confirms this when it states:

> "Thus, the requirement stated in Clause (b) excludes from the words 'estate' . . . such interest . . . of the person for whose benefit a deed has been delivered in escrow." Restatement Law of Property, §9, Comment c.

Similarly, it is further stated:

> "Thus, the requirement stated in Subsection 1(b) excludes from the term 'future interest' . . . the interest, if any, of the person for whose benefit a deed has been delivered in escrow . . . ." Restatement Law of Property, §153, Comment on Subsection (1) c.

The District Court of New Mexico, being aware of the New Mexico law, didn't even mention Mosley v. Magnolia Petroleum Co., supra, but nonetheless held that Fred Baldridge had created a "scheme or device" within the purview of 7 C.F.R. §750.164(a) to evade or exceed the maximum payment limitation of $5,000 per year, despite the fact that he did not receive the money, and notwithstanding that he had committed "common law fraud." The Tenth Circuit's opinion stated that Mosley v. Magnolia Petroleum

Co., supra, was distinguishable, but failed to distinguish it because it couldn't, going on to say that in any event there was fraudulent conduct which caused these real property transactions to be a "scheme or device". In order to find that there was fraudulent conduct, the Tenth Circuit had to depart from well settled principles of fraud and create a new kind of fraud uniquely applicable only to this case. In doing so, it had to ignore the evidence of fraud required under both New Mexico law and that promulgated by the Tenth Circuit which long ago had been adopted as a state rule. Petitioners do not believe that the lower courts can do this.

Both before and after the original Rules of Decision Act of 1789 and its 1948 amendment, 28 U.S.C. §1652, and both before and after Swift v. Tyson, 16 Pet. 1, 10 L.Ed. 865 (1842), reinforced by Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, 114 A.L.R. 1487 (1938), this Court has consistently held that state real property law "controls acquisition, transmission, and transfer of property, and defines the rights of its owners in relation to the state or to private parties." U.S. v. Little Lake Misere Land Company, Inc., 412 U.S. 580, 93 S.Ct. 2389 (6/18/73); U.S. v. Burnison, 399 U.S. 87, 70 S.Ct. 503, 94 L.Ed. 675 (1950); De Vaughn v. Hutchison, 165 U.S. 566, 17 S.Ct. 461, 41 L.Ed. 827 (1897); U.S. v. Fox, 94 U.S. 315, 94-97 S.Ct. 192 (1877); 1A Moore's Federal Practice, ¶0.304[1], p.3019; Id. ¶0.302[4], p.3025; Id. ¶0.304, p.3045. In cases from the Tenth Circuit reaching this Court, the

state rules have been universally applied. U.S. v. Oklahoma Gas & Electric Co., 318 U.S. 206, 63 S.Ct. 534, 87 L.Ed. 716 (1943); Dunn v. Micco, 106 F.2d 356 (Cir. 10, 1939), c.d., 308 U.S. 620, 60 S.Ct. 296, 84 L.Ed. 518; Scully v. U.S., 409 F.2d 1061 (Cir. 10, 1969), c.d., 396 U.S. 876, 90 S.Ct. 152; U.S. v. Champlin Refining Co., 156 F.2d 769 (Cir. 10, 1946), aff. 33 U.S. 788, 67 S.Ct. 1346, 91 L.Ed. 1818. Even in the application of the internal revenue laws, the state law of real property has been applied. C.I.F. v. Estate Bosch, 387 U.S. 456, 87 S.Ct. 1776, 18 L.Ed.2d 886 (1967); Blair v. Coms'r., 300 U.S. 5, 57 S.Ct. 330, 81 L.Ed. 465 (1937); see R.F.C. v. Beaver Co. Pa., 328 U.S. 204, 66 S.Ct. 992, 90 L.Ed. 1172 (1946). Further, this Court has recognized that the enforceability of a note payable to the Small Business Administration against a married woman's separate property is governed by state law. U.S. v. Yazell, 382 U.S. 321, 86 S.Ct. 500, 15 L.Ed.2d 404 (1966). In truth, Petitioners have been unable to find any case that permits a departure from state law in any situation reasonably analogous to that in the instant case. 16 Am.Jur.2d, Conflict of Laws, §14, p.27; 15A C.J.S., Conflict of Laws, §19(1), p.508.

A fortiori, the H.R. Hearings Before the Subcomm. of the Comm. on Appropriations, 86th Cong., 1st Sess. (1960), and 85th Cong., 2nd Sess. (1959), unequivocably demonstrate that the Department of Agriculture applied state real property law universally to Conservation Reserve Program contracts under

the Soil Bank Act. Petitioners submit that where Congress has refused to alter the administrative construction placed on the Soil Bank Act and its regulations by the Department of Agriculture, the courts have to follow. Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 93 S.Ct. 2080 (1973); Red Lion Broadcasting Co., Inc. v. F.C.C., 395 U.S. 367, 89 S.Ct. 1794, 23 L.Ed.2d 371 (1969). The hearings show that the Department of Agriculture approved a division of title to 3,392 acres of Texas land whereby the wife of the owner had her then disabilities removed and the state court approved her execution of a C.R.P. contract in the Roberts Case, all of which resulted in a change in 7 C.F.R. §750.164(b)(5). In the Mills Case a Texas owner of 3,580 acres of land sold it to seven (7) persons related by blood or marriage, two being housewives, a professor, and an attorney, taking back vendor liens with one of the purchasers operating the farm, just as Fred Baldridge contracted to do in the instant case, and it was approved. In the Kromer Case a portion of a 2,692.6 acres Texas farm was deeded to a son and son-in-law with vendor liens back, with the parent and each relative having approved C.R.P. contracts. In the Boyd Case an 8,797.4 acre farm owned by the parents was divided into three (3) farms for his sons, and further put 640 acres in trust for their grandchildren, and other portions were sold to third persons who put them in trust under Texas law for their children, with all transferees getting approved C.R.P. contracts. Similarly in the Turner Case, a 3,520 acre farm was

deeded in part to their two (2) sons-in-law and to a trustee of three (3) separate trusts for another son, a grandson, and a granddaughter, all of whom received approved C.R.P. contracts. In the Guseman Case a 22,247 acre Texas farm was deeded in part to a daughter, to the owner's wife, and a third party, and still another third party who in turn conveyed to a niece and her husband, and finally a portion was conveyed to still another third party who in turn deeded to a trustee for the benefit of his son and daughter, all of whom received approved C.R.P. contracts. In the Wicks Case in Curry County, New Mexico, incidentally Fred Baldridge's home county, a 13,522 acre farm was sold in portions to two (2) bankers, a contractor, a building and loan officer, a dentist, two (2) school teachers, and five (5) farmers, on sale contract wherein on completion of the C.R.P. contracts a warranty deed would be delivered, and if the C.R.P. contract was cancelled the purchaser could be relieved of any further obligation, all of which vendees received approved C.R.P. contracts and each assigned to Wicks the amount of his C.R.P. payment necessary to pay his contract while Wicks also maintained a C.R.P. contract resulting in Wicks receiving a total of $400,710 from the twelve purchasers in addition to the $50,000 on the retained farm. In the Gano Case in Colorado, two parties purchased a 30,000 acre farm at an executor's sale, selling two-fifths (2/5ths) to their relatives, retaining one-fifth (1/5th), selling portions to nine (9) individuals, portioning land owned so that it could be placed in the C.R.P., and all of whom received approved C.R.P. contracts.

It simply is not arguable that the Department of Agriculture recognized, and even encouraged, these various state law approved conveyances. Why then is there opposition to application of the New Mexico law to Fred Baldridge? There is certainly no authority for it, and oddly, neither the trial court nor the Tenth Circuit brought forth any. This is why Petitioners characterize the decision arrogant, arbitrary, and capricious. The decisions of the lower courts are almost absurdly flagrant. No decent citizen, as Fred Baldridge is, should be compelled to accept such a flaunting of the law. The only relief he has is for this Court to grant certiorari.

II

The application of the Soil Bank Act, 7 U.S.C.A. §1801, et seq., and the regulations promulgated thereunder, 7 C.F.R. §750.150, et seq., as singularly applied to Fred Baldridge imposes restraints and burdens not imposed upon or borne by others in like circumstances as shown by the H.R. Hearings Before the Subcomm. of the Comm. on Appropriations, 86th Cong., 1st Sess. (1960), and the 85th Cong., 2nd Sess. (1959), so that such singular application to Fred Baldridge constitutes a deprivation of property without due process of law and constitutes a denial to him of equal protection of the laws contrary to U. S. Const., amend. V.

This Court has held that the Due Process Clause of the Fifth Amendment and the Equal Protection of the Laws Clause of the Fourteenth Amendment both

stem from our "American ideal of fairness," so that "discriminations may be so unjustifiable as to be violations of due process." Bolling v. Sharpe, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954); Washington v. U.S., 401 F.2d 915 (App. D.C., 1968). Administrative agencies must execute the law committed to them fairly and honestly so as to treat everyone alike. Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886); 2 Am.Jur.2d, Administrative Law, §193, p.25; 16A C.J.S., Constitutional Law, §569(5), p.587.

The big objection of the lower courts in this case is that the C.R.P. payments to the other purchasers, related to some extent to Fred Baldridge, paid for land that Fred Baldridge was to acquire when the C.R.P. contracts had expired. Yet in the H.R. Hearings, supra, the House and the Department of Agriculture specifically approved of C.R.P. payments buying the land in the Mills Case, Kromer Case, Boyd Case, Turner Case, Guseman Case, Wicks Case, and Gano Case. Further, the purchasers were related in whole or in part in each of those instances. Still further, the seller was related to the purchasers in whole or in part in each of those cases except the Wicks Case. The seller in the instant matter was in no way related to Fred Baldridge or any of the other purchasers. How then can the government contend that Fred Baldridge or any of the other purchasers committed an original sin when they did nothing more than that which the House and the Department of Agriculture had approved? The only way that Fred Baldridge can be treated

as the others is to either back up all C.R.P. contracts and recover from those who bought land with their payments or otherwise treat Fred Baldridge in the same manner as those persons in the H.R. Hearings were treated.

There is no way Fred Baldridge or the other purchasers can be classified as any different from those sundry persons described in the H.R. Hearings. If ever there was a case where the law has been "applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances," it is here. The application to Fred Baldridge is truly singular. It appears in no other application. It is a gross denial of due process and equal protection of the law under the Fifth Amendment.

III

Petitioners have been unable to ascertain where or how the United States acquired a cause of action to recover from Fred Baldridge $203,660.10 of monies received and spent by six (6) others under their individual C.R.P. contracts authorized by the Soil Bank Act, 7 U.S.C.A. §1801, et seq., and the regulations thereunder, 7 C.F.R. §750.150, et seq., with respect to lands paid for in a manner approved by the Department of Agriculture and in H.R. Hearings Before the Subcomm. of the Comm. on Appropriations, 86th Cong., 1st Sess. (1960), and 85th Cong., 2nd Sess. (1959).

The situation here would appear to be analogous to that in U.S. v. Standard Oil Co. of California, 332 U.S. 301, 67 S.Ct. 1604, 91 L.Ed. 2067 (1947), in that the government has "asked to create a new substantive legal liability without legislative aid and as at the common law." The "creation or negation of such liability is not a matter to be determined by state law." Petitioners can find no basis for any such recovery in New Mexico law in any event. There is feeble authority to the effect that the government can recover for illegal payments received by one as a result of fraud. The difficulty here is that Fred Baldridge never did receive the $203,660.10. The government seeks to trace this money into land purchased by the payees, which land was subsequently contracted to Fred Baldridge under the law of New Mexico. It is ironical that the trial court found that the 4,320 acre farm brought a total sales price of $160,000 but in the same easy motion finds that Fred Baldridge should return a total of $232,211.10. It is irrational to hold that one has to pay back $72,211.10 more than one received even if it be assumed that the end product is traceable into a several liability. Petitioners have been unable to find any case remotely on all fours with the decision of the lower courts in this case. As will be subsequently discussed, there is no evidence that the government was damaged one cent as it received its full consideration as the land was taken out of production as provided for in the Soil Bank Act. So we end up with Fred Baldridge being required to pay $203,660.10, which he never received,

because ten (10) years later he was to end up with land originally valued at $160,000 when the government received $232,211.10 in value by the land being taken out of production. It simply makes no sense.

It is significant that 7 C.F.R. §750.172(a) provides that if there has been a violation of any contract, "The producers who sign the contract will be obligated to refund all such payments and grants received not only by them but also by any tenant or sharecropper who is not signatory to the contract. To a like effect, see 7 U.S.C.A. §1831(a)(6). There is no authority whatsoever for making Fred Baldridge liable for the C.R.P. payments received by others. The regulations and statutes do not contemplate or authorize such an absurd result. A court created action for recovery cannot repeal that which is clearly covered by the regulations and the Soil Bank Act.

The unusual, if not nebulous, approach to the matter by the lower courts was necessitated by the fact that the charges against Fred Baldridge would not stand up under the False Claims Act, 31 U.S.C. §231. Fred Baldridge never submitted any claim except for the single tract that he purchased from Robert Draper. And even then, knowledge of falsity and intent to wilfully file a false claim are completely lacking.

What the courts below did is unique, novel, and totally unjust. The Department of Agriculture and the House clearly approved the purchase of lands with Soil

Bank Act payments. There were no restrictions, statutory or regulatory, prohibiting the alienation of the land after the C.R.P. contracts were terminated. It is difficult to understand why the government should have any interest in the disposition of privately owned lands however or by whomever purchased. The lack of merit in the lower courts' fuzzy thinking deserves review and decision by this Court.

IV

The opinion below is in conflict with that of the Ninth Circuit in U.S. v. Lazy F C Ranch, 481 F.2d 985 (Cir. 9, 1973).

There a partnership consisting of four (4) partners owned a ranch. At the suggestion of the Cassia Co., Idaho, A.S.C.S. Manager, the land was divided into five (5) parcels with each parcel being leased to one of the partners and a fifth unit being retained by the partnership. The leases provided that the partnership would receive 20% of the income from the land and individual lessees would receive the remaining 80%. Both C.R.P. and Acreage Reserve contracts between the individual partners and the partnership were approved in 1958 for five (5) years. The partners deposited their individual checks from the programs in the partnership bank account and were at all times treated as partnership funds. U.S. v. Lazy F C Ranch, 324 F.Supp. 698 (D. Idaho, 1971). The ranch was sold in 1961 terminating the contracts. The government then brought suit under the False Claims Act, 31 U.S.C.A. §231, for damages and forfeitures, and under 28 U.S.C. §1345

for money erroneously paid to the defendants by mistake of law. Amazingly, it was stipulated that the partners had not employed any scheme or fraudulent device to evade the maximum payment limitations, yet it was conceded that the partners were paid money to which they were not entitled although the regulations in effect at the time did not preclude this type of arrangement.

The government contended that the leases were a sham with no other purpose than to deceive the true status of the partners relying on all the payments being treated as partnership property. Notwithstanding, the trial court held that there was no intent to deceive under the False Claims Act as the partners had attempted to comply with government regulations controlling what they believed to be a lawful contract just as Fred Baldridge did in the instant case. It further held that the government was estopped to assert mistake under 28 U.S.C. §1345.

The Ninth Circuit affirmed on the estoppel issue and finding that there had neither been injury nor windfall reward to the defendants stating:

> "The United States received the full benefits of the contract and the partners lost at least as much profit from not farming as they received in government payments. We do not think that under these circumstances the public policy of the United States would be

> significantly frustrated by permitting the partners to retain the additional payments that were improper only because they exceeded the maximum payment regulations." 481 F.2d 985, 990.

The trial court put it somewhat better in the vernacular saying:

> "Here, however, it is clear that the partners, in reliance on their contracts, removed from production more of their farmland than they would have if they had understood the payment limitations applicable to the partnership as the sole eligible producer. Thus the government sustained no injury, since a value was given for the payments received. Nor did the partnership or its partners receive benefits to which they were not justly entitled, since they fully performed their contractual obligations. The court notes that the parties have stipulated that the benefits received by the government were at least equal to the value of the payments made."

It is indeed odd how in Idaho individuals in a partnership can exceed the maximum payment limitation by actually receiving money in excess of the maximum payment

limitations and not have created a "scheme or device" to evade, but in New Mexico Fred Baldridge who never received more than the maximum payment has created a "scheme or device". It is even more odd how in Idaho the partners do not have to return monies each received which admittedly exceeded the maximum payment limitation, where in New Mexico Fred Baldridge is required to return monies which he not only never received but never intended to receive. It is even more striking that compliance with the C.R.P. by taking land out of production results in no injury to the United States in Idaho, but doing the same thing in New Mexico caused injury of $232,211.10 to the United States. Can it be said that the partners in Idaho by trying to maximize the payments from C.R.P. created any less a "scheme or device" than did the purchasers from Robert Draper? Fred Baldridge and the other purchasers meticulously followed the law and the regulations. If there was no intent to deceive in Idaho, there can certainly be none in New Mexico.

Petitioners are cognizant that the amount of money involved does not always have weight in this Court's determination as to whether certiorari should be granted. But in this case, the awesome magnitude of $232,211.10 with 6% interest for four (4) years totals $287,941.76 is going to economically destroy a very decent man and his family. To allow this to happen when there is such a gross divergence between the Ninth and Tenth Circuits' view of the matter, deserves

the attention of this Court by grant of the writ.

V

Fortunately, on the issue of fraud we have no conflict between State and Federal law if that existing at the time material to the facts is used. However, the Tenth Circuit purports to create a new kind of fraud by judicial fiat which Petitioners submit cannot be done.

The Tenth Circuit in Pacific Royalty Co. v. Williams, 227 F.2d 49 (Cir. 10, 1956), c.d. 351 U.S. 951, 76 S.Ct. 847, 100 L.Ed. 1474, and in Davis v. Wilson, 276 F. 672 (Cir. 10, 1921), adopted a definition of actionable fraud in regard to New Mexico matters which definition has been in turn adopted by the Supreme Court of New Mexico in Sauter v. St. Michael's College, 70 N.M. 380, 374 P.2d 134 (1962). In Pacific Royalty Co., supra, the Tenth Circuit said:

> "The essential elements of actionable fraud are a false representation of a material fact, knowledge of its falsity when made, intent to deceive, and reliance thereon with resulting damages."

Each of the purchasers from Robert Draper represented that they respectively owned the land on which they had C.R.P. contracts. They still think this. That representation is obviously one of law. Under New Mexico law and that of the Tenth Circuit, a misrepresentation of

law cannot constitute a basis for actionable fraud. State Farm Mutual Automobile Insurance Company v. Petsch, 261 F.2d 331 (Cir. 10, 1958); Fawcett v. Sun Life Assur. Co. of Canada, 135 F.2d 544 (Cir. 10, 1943); Agnew v. Landers, 59 N.M. 54, 278 P.2d 970 (1955); Rogers v. Stacy, 63 N.M. 317, 318 P.2d 1116 (1957). To a like effect see U.S. v. Outer Harbor Dock & Wharf Company, 124 F.Supp. 337 (S.D. Calif., Cent. Div. 1954); Klinger v. Hummel, 11 Ariz. App. 356, 464 P.2d 676 (1970); 37 C.J.S., Fraud, §55, p.323; 37 Am.Jur.2d, Fraud & Deceit, §73, p.113.

From the aforegoing it is patently clear that there can be no actionable fraud in this case. There exists not one single element of those required. Where is there a false representation of fact? Neither Fred Baldridge nor any of the other purchasers knew at the time the C.R.P. contracts were signed, and refuse to admit now that they were not the sole owners of their respective tracts. If they did not know that their representation was false, they obviously could have had no intent to deceive. The mere fact that the C.R.P. contracts were to pay for their respective lands cannot create any such intent because the Department of Agriculture and the H.R. Hearings Before the Subcomm. of the Comm. on Appropriations, 86th Cong., 1st Sess. (1960), and 85th Cong., 2nd Sess. (1959), approved such acquisition. Finally, where is the damage to the United States? There is not and cannot be any damage as found in U.S. v. Lazy F C Ranch, 481 F.2d 985 (Cir. 9, 1973). There is not present in this case evidence of a single element of action-

able fraud. More especially is this true when it was perfectly obvious that the Lea Co. A.S.& C.S. Committee knew that this family was purchasing a farm with Soil Bank payments and could have made inquiry had they had any curiosity on the subject. Fred Baldridge's unimpeached and uncontradicted testimony is that he offered all of the documentation to Joe Peterson, the Lea Co. A.S.& C.S. Manager, but he declined to read it. It was improper for the court to so disregard this testimony. Rowdon v. Stanley, 455 F.2d 482 (Cir. 10, 1972); Chicago, Rock Island and Pacific Railway Company v. Howell, 401 F.2d 752 (Cir. 10, 1968); Potecuk v. Lourdes, 310 F.2d 527, c.d. 372 U.S. 930, 83 S.Ct. 875, 9 L.Ed.2d 73 (1962); Nicholas v. Davis, 204 F.2d 200 (Cir. 10, 1953); Leonard Motor Co., Inc. v. The Roberts Corporation, 85 N.M. 320, 512 P.2d 80 (1973); Aragon v. Boyd, 80 N.M. 14, 450 P.2d 614 (1969); Heron v. Gaylor, 52 N.M. 23, 190 P.2d 208 (1948); Medler v. Henry, 44 N.M. 275, 101 P.2d 398 (1940).

Because of all of this overwhelming authority, the Tenth Circuit had to take a different tack, i.e., create a vague and new kind of fraud in order to supply the missing links by stating "The fact that it was not in the form of traditional false representations does not detract from the conclusion." It cites in support of this Knauer v. U.S., 328 U.S. 654, 66 S.Ct. 1304 (1946), which was an action brought under §338(a) of the Nationality Act of 1940, 8 U.S.C.A. §738, 54 Stat. 1137, 1138, to cancel a certificate of naturalization secured by fraud by a Nazi German. The

proceeding was entirely statutory and cannot by the remotest imagination be relevant to the instant case. It is comforting to know that this Court will not even accept concurrent findings of lower courts in such proceedings as stated in U.S. v. Ness, 254 U.S. 319, 38 S.Ct. 118, 62 L.Ed. 321.

The next authority alleged to be in support of the Tenth Circuit's new theory was the decision by this Court in S.E.C. v. Capital Gains Research Bureau, 375 U.S. 180, 84 S.Ct. 275 (1963), which was another statutory action brought by the Securities Exchange Commission to enjoin a registered security adviser under the Investment Adviser Act of 1940, 15 U.S.C.A. §80b-6. This Court found that the investment adviser stood in a fiduciary relationship to his clients so that it was unnecessary to establish all of the elements of fraud, and that his practice of "scalping" should be enjoined. The Court found that fraud and deceit as developed around transactions involving land were ill-suited to the sale of intangibles. Petitioners believe the case stands for just the opposite of what the Tenth Circuit cited it for as it, in effect, affirms the doctrine of fraud and deceit as to land. Patently, Fred Baldridge did not stand in a fiduciary relation to the Department of Agriculture. The Tenth Circuit's attempted analogy misses the mark a mile.

The other two cases cited by the Tenth Circuit are both classical and involve affirmances of cases tried by the writer of the opinion when he was on the district

bench. J. F. White Engineering Corp. v. General Ins. Co. of America, 351 F.2d 231 (Cir. 10, 1965), and Nichoalds v. McGlothlin, 330 F.2d 454 (Cir. 10, 1964) In J. F. White, supra, the trial court instructed the jury as Petitioners here would have. Nichoalds, supra, is significant only in that it cites Knauer v. U.S., supra, as authority for finding a misrepresentation as to the individual rather than corporate ownership of cattle.

To reach still lower, the Tenth Circuit cites 37 C.J.S., Fraud, §1, p.204, for authority, a complete reading of which will show that there can be no fraud if a person does what he has a legal right to do.

The opinion of the Tenth Circuit is one completely absent authority. It can be added that the trial court's Memorandum Opinion is equally without authority. The refusal of both courts to apply well established principles of law on which both they and the Supreme Court of New Mexico have long agreed should be grounds enough for granting the writ.

VI

The finding of liability under the False Claims Act, 31 U.S.C. §231, as to the Cropland Adjustment Program of 7 U.S.C.A. §1838, et seq., and its regulations, 7 C.F.R. §751.101, et seq., raises similar problems of application of New Mexico law.

New Mexico clearly holds that although there has been a manual delivery of a deed, no delivery occurs without an intent to pass title. Nosker v. Western Farm Bureau Mutual Insurance Company, 81 N.M. 300, 466 P.2d 866 (1970). Likewise for an effective delivery to have been made, the grantee must receive it with an intention by both grantor and grantee that the title pass to him. Waters v. Blocksom, 57 N.M. 368, 258 P.2d 1135 (1953). And more so, it is well settled everywhere that a deed can be held as a mortgage. Raulie v. U.S., 400 F.2d 487 (Cir. 10, 1968); Sargent v. Hamblin, 57 N.M. 559, 260 P.2d 919 (1953); Palmer v. City of Albuquerque, 19 N.M. 285, 142 P. 929, L.R.A. 1915A 1106 (1914).

If, as Petitioners think, the federal courts have to follow these concepts of New Mexico real property law, there can be no support for the conclusion that Fred Baldridge submitted a false claim on the land he leased and on which he held a deed as security for Robert Draper's performance as to payment of the Connecticut Mutual Life Insurance Co. mortgage. If the Tenth Circuit can ignore New Mexico law and follow only its own broad-brush kind of conclusion without guidance of any law, one has to turn to the elements of proof required under the False Claims Act.

The instant case is in large part analogous as to its false claim aspect to U.S. v. Lazy F C Ranch, 481 F.2d 985 (1973), In that the idea for the lease arrangement stemmed from the suggestion of Troy Harris, then the Manager of the Lea Co. A.S.& C.S. office, who admitted

that Fred Baldridge had kept the farm in full compliance with the C.A.P. program. The farm was kept out of production and there could not be any damage to the government. But more especially, the elements of proof required under the False Claims Act are missing. Even were Fred Baldridge's conclusions erroneous as to the legal effect of his having a lease and simultaneously holding a deed as security, you cannot impute from that a guilty knowledge and purpose to cheat the government by filing a false claim. He still doesn't believe his claim to be false.

The government received full value for the payment made on the C.A.P. contract. It has neither general nor specific damages even were the claim to be considered as intentionally false. Under these circumstances, this Court has held that all the government could recover would be $2,000 under the False Claims Act. Rex Trailer Company, Inc. v. U.S., 350 U.S. 148, 76 S.Ct. 219 (1955). The Department of Justice has been guilty for years in misapplying the law in False Claims cases. It assumes that when the government pays out money, there is never anything coming from the payee. Here it is quite clear what came from the payee, he kept the land out of production. Since that was a valid consideration in the inception, it should be equally valid at the conclusion.

CONCLUSION

For the reasons aforesaid, it is respectfully prayed that a writ of

certiorari be granted to review the judgment of the United States Court of Appeals for the Tenth Circuit.

Respectfully submitted,

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By:

ATTACHMENT 1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FRED BALDRIDGE, TRAVIS W. TAYLOR, and HERMAN D. TERRY,	)	
Plaintiffs,	)	
vs.	)	NO. 8504 CIVIL
JOHN R. HADLEY, J. D. MONTOYA, and ED GARY, Individually, and as members of THE NEW MEXICO STATE AGRICULTURAL STABILIZATION and CONSERVATION COMMITTEE; and CLIFFORD M. HARDIN AS SECRETARY OF AGRICULTURE OF THE UNITED STATES, COMMODITY CREDIT CORPORATION,	)	
Defendants.	)	
UNITED STATES OF AMERICA,	)	
Intervenor.	)	

MEMORANDUM OPINION

This action was commenced by the plaintiffs, Fred Baldridge, Travis W. Taylor and Herman D. Terry, against the members of the New Mexico State

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Agricultural Stabilization and Conservation Committee (ASC), and the then Secretary of Agriculture. Redress is sought from the committee's determination, as affirmed by the Secretary during the pendency of this action, that the plaintiffs and others had engaged in a scheme or device designed to evade or which had the effect of evading the annual dollar limitation placed upon recipient producers participating in the Conservation Reserve Program. The State A.S.C. committee determined that such a device was employed in gaining certain Conservation Reserve contracts and held that they were void from their inception. Further, the committee concluded that only Fred Baldridge was responsible for refunding all money paid under all contracts involved in what was considered to be essentially one transaction. The Government now seeks to enforce that decision and obtain a judgment against Fred Baldridge in the amount of $232,211.10.

Jurisdiction for this action is found under 7 U.S.C. §1831(d), which provides for a trial de novo of the committee's determination to terminate Conservation Reserve contracts and demand refund of money paid under the contracts. The United States has intervened as the real party in interest and, in addition to defending the committee's determination, has asserted claims against the plaintiffs on the independent jurisdictional bases of 28 U.S.C. §1345 and 31 U.S.C. §232 for misrepresentation and for fraudulently submitting false claims to the government.

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The basic facts underlying this controversy are summarized as follows. Prior to March 1958, Robert Draper, owner of a 4300 acre farm located in Lea and Roosevelt counties, New Mexico, entered into negotiations with Fred Baldridge and T. E. Baldridge, his father, for the sale of this farm. It was arranged, primarily between Robert Draper and T. E. Baldridge, acting for his son Fred, that the farm was to be divided into seven tracts of approximately 640 acres each and six of the seven would be transferred to Fred Baldridge, Travis W. Taylor, Sam L. Henderson, Thomas Fred Adams, H. E. Baldridge, Jr. and Herman D. Terry. Robert Draper was to retain the seventh tract.

Under the 1958 agreement it was agreed that each of the grantees would enter his respective tract into the Conservation Reserve Program so that the Conservation Reserve contract payments could be used to pay the purchase price to Draper. Meanwhile Fred Baldridge would do the work necessary on each tract, and the land would be deeded to him.

Each of the other buyers is in some way related to Fred Baldridge. Travis W. Taylor is a brother-in-law of Fred Baldridge and in 1958 lived in Clovis, New Mexico. Shortly after the agreement to purchase the farm was reached, his employer transferred him to Colorado. Sam L. Henderson is also a brother-in-law of Fred Baldridge. In 1958 he lived on a farm near Amarillo, Texas. He never took part in any operations on the land in question. Thomas Fred Adams

is one of Fred Baldridge's second cousins. He also took no part in operations on his tract. H. E. Baldridge, Jr. is also a second cousin of Fred Baldridge. In 1958 he was in the Navy and stationed in California. His father handled his part in the transaction, and this cousin neither saw the tract before purchase nor conducted operations on it afterward. Finally, Herman D. Terry is a cousin of Fred Baldridge. He resided in Abilene, Texas in 1958 and conducted no operations on the tract purchased in his name.

On March 3, 1958, the grantees executed notes and mortgages in favor of Robert Draper to secure payment for their respective tracts. The notes provided inter alia that Robert Draper was to look only to the land as security and that no recourse was to be had upon other assets of the buyers in case of default on the notes. Also on this date Robert Draper executed a note in favor of Fred Baldridge for $47,464.77. Deeds to the six tracts sold were recorded within two days thereafter, causing record title to be in the seven participants.

It was understood by all concerned that the entire transaction was conditioned upon entry of the purchased land into the Conservation Reserve Program. The six purchasers immediately applied for Conservation Reserve contracts. The County A.S.C. committee, after consultation with the State A.S.C. Director, was somewhat unsure of what appeared to be a possible family

arrangement to evade the $5,000.00 limitation and decided to deny the application at that time. They did so under their discretionary power by virtue of the regulation then in effect which provided:

> Effective with respect to contracts under which 1958 or a subsequent year would be the first year of the contract period, a farm as to which the ownership has changed shall not be eligible to be placed in the conservation reserve program during the first twelve months of the new ownership unless the county committee determines that the farm would continue to be farmed by the new owner in the absence of the Soil Bank Program. 22 F.R. 9641 (Dec. 3, 1957)

On February 4, 1959, upon reapplication by all purchasers, all tracts were approved for and entered in the Conservation Reserve Program.

Less than a month later all participants, including Robert Draper, executed contracts of sale for their respective sections to Fred Baldridge. The timing and uniformity of this action leads to the conclusion that this was part of and pursuant to the arrangement agreed upon among the participants in early 1958. Each contract of sale recited that the sole consideration to the seller would be:

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"* * * the performance by Buyer of all cultivation and seeding required for qualification of said land for the maximum payments by the Department of Agriculture * * * for the ten year period commencing in the year 1959 * * * *"

Warranty deeds to Fred Baldridge were placed in escrow to be delivered to him upon completion of the ten year period.

The County committee, in meeting with the applicants, did not specifically inquire about any contracts, agreements or deeds which might affect Conservation Reserve Program contracts, and none of the participants volunteered such information. Fred Baldridge testified that on one occasion he did approach one Joe Peterson, the office manager of the committee in early 1959 and did offer to show him the documents regarding his family's plans, but that the offer was not accepted. There was no other evidence as to such an incident and in view of all the evidence in the case no credence is given to that testimony. Baldridge testified that no one asked about the escrowed deeds and that he volunteered no information as to them.

Fred Baldridge performed under the contracts and brought all the tracts into compliance with Conservation Reserve Program requirements. A temporary cover crop of maize and hygeria was planted in 1959. The crop was allowed to fall in the field for the purpose of protecting the permanent cover crop to be planted

the following year. Several miles of fence were constructed to complete enclosure of the farms. In 1960 Fred Baldridge planted a permanent cover of African Weeping Lovegrass. From 1960 to 1968 all that was required of Fred Baldridge to keep the farms in compliance was to replant several small areas in Weeping Lovegrass, control noxious weeds and repair fences when necessary to keep stock out of the fields.

In return for Fred Baldridge's work, annual payments were made under the Conservation Reserve Program in the following totals:

Travis Taylor	$33,906.60
Sam Henderson	34,894.30
Thomas F. Adams	28,931.40
Henry E. Baldridge	26,371.20
Herman Terry	39,655.70
Fred Baldridge	28,551.00
Robert Draper	39,900.90

Payments on the land to or for Robert Draper were made by the participants in the following totals:

Travis W. Taylor	$22,162.14
Sam Henderson	19,445.40
Thomas Adams	18,686.46
Henry E. Baldridge, Jr.	17,174.43
Herman O. Terry	25,855.83
Fred Baldridge	32,016.23

Robert Draper, T. E. Baldridge and Fred Baldridge, without disclosing their intention to the other parties involved, agreed among themselves in 1958 that the entire farm would be sold for around

$160,000.00. They then computed the payments to be made by the buyers to total about $210,000.00. The excess $50,000.00 was to be rebated to Fred Baldridge over the ten year period at the rate of $3,352.11 for the first six years and $8,000.00 per year thereafter. This accounts for the $47,464.77 note Robert Draper executed in favor of Fred Baldridge on March 3, 1958, and under which he made payment of $3,352.11 in 1959.

The applicable regulations in force in 1959 provided in pertinent part:

> "The total of all annual payments under the conservation reserve program to pay any producer for any year with respect to all farms in which he has an interest shall not exceed $5,000.00. * * * * All or any part of the annual payment which otherwise would be due any producer may be withheld, or required to be refunded, if he has adopted or participated in adopting any scheme or device * * * or by any other means designed to evade, or which has the effect of evading the provisions of this section." 21 F.R. 6296, 8793 (1956)
>
> "In the event the Secretary determines that there has been a violation of any contract during the time

> the producer has control of the farm, and that such violation is of such a substantial nature as to warrant termination of the contract, all rights to annual and cost share payments and grants under the contract shall be forfeited and all such payments and grants received by the producer shall be refunded with interest at the rate of 6% per annum." 21 F.R. 6297 (1956)
>
> (q) "Producer" means any person who is an owner or landlord, cash tenant, standing-rent tenant, fixed rent tenant, share-tenant, sharecropper, or in the case of rice, a person who furnishes water for a share of the crop. 21 F.R. 6289 (1956) as amended at 22 F.R. 7129 (1957)

In 1959 Fred Baldridge received 3,684.00 directly from his Conservation Reserve Program Contract annual payment. In that same year he received an additional $3,352.11 of Conservation Reserve Program funds in the form of a rebate from Robert Draper. The indirection in the manner of receipt of this payment is not sufficient to change the character of the funds received. This, without more, constituted a violation of the contract between the Conservation Reserve Program and Fred Baldridge which was of such a nature as to defeat or

substantially impair the purposes of the contract signed by Fred Baldridge.

The agency, however, has held Fred Baldridge liable for refund or forfeiture of all monies received by all participants in the transaction. Numerous factors indicate that the entire transaction was conducted by Fred Baldridge solely for his own benefit, and that when the transaction is viewed in its entirety, Fred Baldridge was, for all practical purposes, the sole beneficial owner of all seven tracts throughout the period in question.

Some of the factors upon which the Court relies include:

(a) Following the withdrawal of Sam L. Henderson from the arrangement upon receipt by him of the Soil Bank payment on Farm A-104 on or about October 25, 1965, Fred Baldridge made two more payments on Sam Henderson's note to Draper on December 14, 1965 and October 25, 1966.

(b) Fred Baldridge immediately withdrew from escrow at the Citizens Bank of Clovis the warranty deed to Farm A-104 from Sam Henderson and Lois Baldridge Henderson to himself following Henderson's withdrawal from the arrangement and dealt with such property as he saw fit, notwithstanding the provisions in his contract with Henderson that such deed should not be withdrawn until December 16, 1969.

(c) Fred Baldridge caused Robert Draper to execute a Conservation Reserve

Contract on Farm A-104 on March 14, in order to continue such farm in the Conservation Reserve Program after Henderson's withdrawal from the plan, scheme, device and arrangement, when in fact Robert Draper was not the true owner and producer thereof, thereby continuing to conceal the details of the arrangement and avoiding the maximum payment limitation.

(d) Fred Baldridge and his mother, Montie Baldridge, for his benefit made mortgage payments to Connecticut Mutual Life Insurance Company when Robert Draper defaulted in such payments. In addition, Fred Baldridge caused Draper's grantees to make payments to Connecticut Mutual Life Insurance Company on Draper's mortgage without Draper's consent rather than to Draper himself even though the promissory note required payments to be made to Draper himself.

(e) Fred Baldridge deeded Henderson's farm (A-104) to his mother, Montie Baldridge, because of her assistance in making the mortgage payments to Connecticut Mutual.

(f) Fred Baldridge assessed and paid all of the real estate taxes on Farm A-109 which was ostensibly retained by Robert Draper at all times material after the year 1959.

(g) Fred Baldridge withdrew all of the remaining warranty deeds from Draper's grantees to himself held in escrow by the Citizens Bank of Clovis in March of 1969 notwithstanding the fact that the individual contracts between Fred Baldridge

and Draper and Draper's grantees specified that such deeds were to be delivered in December of 1969.

(h) Fred Baldridge retains in his possession unrecorded the deeds from plaintiffs Travis W. Taylor and Herman D. Terry to himself to Farms A-103 and A-107 and could record them at any time according to his own admission.

(i) Fred Baldridge received kickbacks or rebates from Draper in the form of payments on Draper's $47,464.77 promissory note to Fred Baldridge.

(j) Fred Baldridge received all of the cost share payments made by the Department of Agriculture to assist in bringing the entire Draper farm into compliance with the Conservation Reserve Program.

Participation by his relatives was necessary only insofar as it was necessary that record title to the land and contractual relationships with the government be in seven names rather than one.

Disregarding income tax, the amount of money retained by the other participants was substantial, but it amounts to no more than payment for acting as Fred Baldridge's agents both in holding record title to the land and in acting as conduits for the Conservation Reserve money used to pay for his farm. Considering the fact that income tax was payable on the total amount received by each participant, the amount actually retained by them was nominal.

The money so retained by the other participants to secure their cooperation in Fred Baldridge's enterprise can only be viewed as money paid to or for the principal benefit of Fred Baldridge. Consequently, all amounts paid under the other participants' Conservation Reserve contracts were received by them as agents of Fred Baldridge.

The Court finds on trial de novo that the agency was correct in its determination that Fred Baldridge was the instigator of the plan, scheme or device to evade the maximum payment limitation by causing the government to pay for a 7-tract farm of which he was the real owner. Further it is found that he was in fact the owner-producer within the meaning of the pertinent regulations and therefore should be required to refund all monies paid to all participants in the transaction. It was a gross violation of the maximum payment limitation of which Baldridge and all the other participants had knowledge, and constituted a breach of the contracts involved, and was of such a nature as to substantially impair the purposes of the contracts. Termination of the contracts and the requirement that Fred Baldridge refund the money paid under them was appropriate.

Plaintiffs affirmatively assert various statutes of limitations as barring recovery in this case. The Statute of Limitations contained in 28 U.S.C. §2462 relates only to actions for civil fine, penalty or pecuniary forfeiture and has no application to a compensatory suit such as the one before

the court.

15 U.S.C. 714b(c) provides a special statute of limitations for suits by or against the Commodity Credit Corporation (C.C.C.). All payments here in question were made by C.C.C. sight draft. Evidence at the trial of this matter showed that, while authorized to enter contracts in its own behalf, the C.C.C. had no authority to enter contracts on behalf of the Conservation Reserve Program. The only function of the C.C.C. in the Conservation Reserve Program was to issue drafts in the proper amounts and to the proper persons under contracts entered into by the Secretary of Agriculture as director of the Conservation Reserve Program. Funding for the Conservation Reserve Program was by appropriation directly to the Conservation Reserve Program and merely held in trust by the C.C.C. In view of the minimal function of the C.C.C. in Conservation Reserve Program activity this is not properly a suit by or against the C.C.C. Consequently the above statute of limitations does not apply.

28 U.S.C. §2415(a) provides that any "* * * action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues * * *" Subsection (g) of this section provides that accrual prior to July 18, 1966, the date of enactment of this section, shall be deemed to be accrual on July 18, 1966.

It follows, therefore, that a count in misrepresentation, having its foundation ex contractu would not have been barred until July 18, 1972. The First Amended Complaint in Intervention was filed on February 24, 1971.

If, however, the action were considered as one of tort rather than contract, the applicable statute of limitations would still not bar maintenance of this suit. 28 U.S.C. §2415(b) provides that except as otherwise provided by Congress, "* * * every action * * * which is founded upon tort shall be barred unless the complaint is filed within three years after the right of action first accrues; * * *" 28 U.S.C. §2416(c) provides in essence that the action shall not be deemed to accrue so long as "* * * facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with the responsibility to act in the circumstances."

Minutes of the Lea County A.S.C. committee meetings reflect that the committee had no cause for suspicion of any kind with regard to these contracts until, at the earliest, October 10, 1967. At that time the committee received an inquiry from the First National Bank in Seagraves regarding the assignment on a contract which had been cancelled. This inquiry led to the discovery on or after October 16, 1967, that acreages listed on recorded deeds to Mr. Draper's and Mr. Baldridge's farms differed materially from the acreages found in the applications for entering the farms in the

Conservation Reserve Program. This discovery prompted the committee to request that an investigator be called in to look further into the matter. Neither the fact that there had been an assignment of a non-existent Conservation Reserve Program payment nor the fact that an acreage discrepancy existed between the deeds and Conservation Reserve Program contracts was relied upon by the government in any way in this suit, and these are not the material facts, which, when known, cause the action to accrue.

After the committee's suspicions became aroused by this unrelated matter, Carl L. Garrett, a special agent with the Office of the Inspector General, United States Department of Agriculture, investigated the circumstances surrounding the execution of the Conservation Reserve Program contracts and discovered much of the factual information material to the government's right of action. This information was included in a report which was not available to any Department of Agriculture official charged with the responsibility to act in this case until several months after February 24, 1968. Since the complaint in intervention by the United States was filed on February 24, 1971, it is within the time period allowed under 28 U.S.C. §§2415(b) and 2416(c) and would not be barred. Thus, a suit sounding in tort would not be barred.

Plaintiffs further assert that recovery should not be allowed in this case based upon the administrative determination of liability of Fred Baldridge.

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It is claimed that various instances of procedural error in the agency hearings violate the plaintiffs' constitutional rights. However, any error which might have been committed at that level has been cured by the trial de novo proceeding had herein at the instance of the plaintiffs.

Two issues in regard to the Conservation Reserve Program contracts remain for consideration.

1. The propriety of any judgment against Travis Taylor and Herman Terry in this action.

2. Recovery from Fred Baldridge, under a common law fraud theory or the double damages and fine provisions of the False Claims Act, 31 U.S.C. §232.

Turning first to the government's claim against Taylor and Terry, it is apparent that the A.S.C. committee proceeded directly against Fred Baldridge under a quasi-judicial administrative procedure designed for resolution of just such a controversy. However, Taylor and Terry were notified of the determination against Baldridge and were given standing to appeal from that determination. They were, in fact, represented by counsel and designated as appellants in the agency's appeal procedures. That was the posture of the proceeding when this action was filed. No determination adverse to them was ever made at any level of the administrative process. Whether or not participation in

the administrative proceedings by Taylor and Terry rises to the level of res judicata, which would preclude a subsequent action against them by the A.S.C. committee, it does establish that the committee was aware of their parts in the transaction, and that it could have, had it so chosen, sought to hold them accountable in the administrative proceeding.

The Government argues, on the basis of United States v. Borin, 209 F.2d 145, 148 (5th Cir. 1954); and United States v. Silliman, 167 F.2d 607, 611 (3rd Cir. 1948), that the existence of statutory procedures does not divest the sovereign of the right to pursue Common Law remedies.

In a field where common law rights are replaced by statutory ones, the charge of which is given to an administrative agency, ordinary remedies at law may be deemed to persist as to matters not coming within the purview of the statute. Where no administrative remedy is available or where the administrative remedy is found to be inadequate, resort to the courts may be allowed. See Tunstall v. Brotherhood of Locomotive Firemen & Engineers, et al, 323 U.S. 210 (1944); Steele v. Louisville & N.R. Co., et al, 323 U.S. 192 (1944). However, it cannot be said that the administrative remedy available against Terry and Taylor was inadequate. Indeed, it was available and adequate, even though the ultimate conclusion of it might not be satisfactory to the government.

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Under all of the circumstances of the administrative background of this case it would be unfair to allow the government to now recover against Terry and Taylor upon new theories in court in an action which began as an appeal from the administrative determination against Fred Baldridge. Judgment will be entered in favor of Travis Taylor and Herman Terry against the government's claims.

As against Fred Baldridge, the government asserts alternatively to its defense of the committee's action, claims based upon common law fraud and upon the False Claims Act. The government has introduced evidence which is clearly and convincingly persuasive that recovery could be allowed against Fred Baldridge under a common law fraud theory. The evidence which supports the committee's conclusion is equally convincing that Fred Baldridge knowingly perpetrated a fraud upon the government. However, a recovery under a common law fraud theory would be no greater than the recovery already allowed by sustaining the committee action. Thus the necessity for further discussion of a common law fraud recovery is obviated. It should be noted that if the administrative procedure had been inadequate or unavailable to sustain the full recovery of $232,211.10 against Fred Baldridge, the government would be entitled under the evidence in this cause to a judgment in that amount against him for common law fraud.

Recovery will not be allowed against Fred Baldridge under the False Claims Act. Having proceeded through the administrative process and obtained a full recovery

from Baldridge of all amounts paid to him and the other participants, it would not now be just to allow the government to elect to proceed under the False Claims Act and recover the double damages provided thereunder.

There is one other matter consisting of an entirely different claim and one which has not been involved in any administrative proceeding. The government in its fourth and fifth causes of action in its first amended complaint in intervention, has alleged and by clear, strong and convincing evidence proved that on or about January 31, 1966, Fred Baldridge entered into an agreement with the United States under the Cropland Adjustment Program provisions of the Food and Agriculture Act of 1965, 79 Stat. 1187, 1206; 7 U.S.C. §1838, and the regulations issued thereunder (7 C.F.R. §751.101 et seq.; 31 F.R. 3483); by reason of which the United States paid to Fred Baldridge the sum of $14,983.28.

In his Request for Agreement under this program Fred Baldridge represented that he was a cash lessee of the farm to be entered into the program and that the farm had not changed hands during the preceding three years. A recorded ten-year farm lease agreement executed by Fred Baldridge and Robert Draper supported these representations. Actually, Robert Draper had deeded the property to Fred Baldridge in 1958, and this deed was held in escrow to be delivered to Fred Baldridge in 1966. Further, a second deed to the property had been executed by Robert Draper and delivered on or about January 1, 1966, to Fred Baldridge.

ATTACHMENT 1

Neither of these deeds was of record at the time of execution of the contract between Fred Baldridge and the United States.

Under any view of these facts one or both representations by Fred Baldridge must necessarily have been false. The farm lease was wholly fictitious, and both it and the representations made by Fred Baldridge were knowingly and fraudulently presented solely for the purpose of causing the United States to pay to him money to which he knew he was not entitled. Therefore, judgment in the additional amount of $14,983.28, doubled, plus $2,000.00 civil penalty will be entered against Fred Baldridge and in favor of the United States pursuant to the provisions of the False Claims Act, 31 U.S.C. §231, totaling $31,966.56.

Judgment against the plaintiff Fred Baldridge and in favor of the plaintiff in intervention, the United States will be entered herein in the amount of (a) $232,211.10 with interest at the rate of 6% from February 17, 1970; and (b) in the further amount of $31,966.56.

/s/ Howard Bratton
UNITED STATES DISTRICT JUDGE

ATTACHMENT 2

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

JANUARY TERM, 1974

FILED
JAN 9 1974
HOWARD K. PHILLIPS
CLERK, UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FRED BALDRIDGE, TRAVIS W. TAYLOR and HERMAN D. TERRY,

Plaintiffs-Appellants,

v.

JOHN R. HADLEY, J. D. MONTOYA and ED GARY, individually and as members of THE NEW MEXICO STATE AGRICULTURAL STABILIZATION and CONSERVATION COMMITTEE; and CLIFFORD M. HARDIN as Secretary of Agriculture of the United States, COMMODITY CREDIT CORPORATION,

Defendants-Appellees,

and

UNITED STATES OF AMERICA,

Intervenor-Appellee, Cross-Appellant.

Nos. 73-1320 and 73-1321

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

(D.C. No. 8504 Civil)

ATTACHMENT 2

Lynell G. Skarda, Clovis, New Mexico (Michael T. Garrett of Garrett & Hartley, Clovis, New Mexico, on the brief), for Plaintiffs-Appellants.

Michael H. Stein, Attorney, Department of Justice, Washington, D.C. (Irving Jaffe, Acting Assistant Attorney General, Victor Ortega, United States Attorney and Robert Kopp and Walter H. Fleischer, Attorneys, Department of Justice, on the brief), for Defendants-Appellees, Intervenor-Appellee.

Before SETH, ALDISERT and DOYLE, Circuit Judges.

DOYLE, Circuit Judge.

This is an action which was commenced by Fred Baldridge, Travis W. Taylor and Herman D. Terry, seeking to set aside the determination of the New Mexico State Agricultural Stabilization and Conservation Committee, which determination had been affirmed by the Secretary of Agriculture, holding that the plaintiffs and others had engaged in a scheme or device designed to evade the limitation placed upon producers who participate in the Conservation Reserve Program under the Soil Bank Act, 7 U.S.C. §1801 et seq. The Committee ruled that the device was entered into for the purpose of gaining reserve contracts. It was held that these contracts were void in that they were part of a fraudulent scheme to circumvent the limitation of the Act and that as a consequence Baldridge was liable for the monies which had been paid by the government in the belief that the parties involved were bona fide

owners. The amount of the judgment was $232,211.10 plus an additional sum against Fred Baldridge in the amount of $31,966.56, pursuant to the False Claims Act, 31 U.S.C. §231. The appeal here is from a judgment of the district court which generally upheld the administrative actions.

The governing jurisdictional statute is 7 U.S.C. §1831(d) which authorizes a trial de novo in United States District Court of the decision of the Agricultural Stabilization and Conservation Committee. The United States intervened in the district court asserting claims against the plaintiffs on the independent jurisdictional basis of the False Claims Act, 31 U.S.C. §231 et seq., and for misrepresentation, 28 U.S.C. §1345.

The transaction giving rise to these proceedings in question commenced in 1958, at which time Robert Draper was the owner of a 4,300 acre farm in New Mexico. He entered into negotiations with Fred Baldridge and T. E. Baldridge, son and father, for the sale of this farm. For the purpose of the transaction the farm was divided into seven tracts of 640 acres each. Six of these were transferred to Fred Baldridge, Travis W. Taylor, Sam L. Henderson, Thomas Fred Adams, Henry E. Baldridge, Jr. and Herman D. Terry. Robert Draper retained the seventh tract. An agreement was entered into under the terms of which each of the grantees would with his particular tract become a participant in the Conservation Reserve Program. Each of the grantees executed a promissory note to Draper secured by a mortgage

on the parcel deeded. The note provided in essence that the payee agreed to look solely to the property described in the mortgage and that no deficiency would be entered against the maker of the note. Each of the grantees executed a warranty deed on the property to Fred Baldridge. These deeds were delivered to the Citizens Bank of Clovis, New Mexico, to be held in escrow pursuant to contracts of sale from the five relatives and Draper to Fred Baldridge. The contracts expressed the consideration as being Fred Baldridge's performance of all work necessary under the Conservation Reserve Program for the ten-year period commencing in 1959, that is, the cultivation and seeding required by the Department of Agriculture. A further provision was that the sellers were to pay to Baldridge all sums received by them from the Department of Agriculture in connection with work performed on the land, and finally provided that after completion of the ten-year Soil Bank contracts the deeds were to be delivered to Baldridge.

The original grantor, Robert Draper, entered into the same kind of an arrangement, that is, he executed a note in favor of Fred Baldridge for $47,464.77 and was also a party to the contract. The purchasers, including Draper, applied for participation in the Conservation Reserve Program. The County A.S.C. Committee the first year denied the applications, but granted them the next year.

Significantly, all of the participants in this were relatives of Baldridge with the exception of Robert Draper, the

grantor. A regulation, 22 Fed. Reg. 9641, provides that eligibility hinges on the understanding that the property for which application is made would, in the absence of the granting of the award, be farmed by the new owner. Very soon after the approval of the tracts of land for participation in the program, the participants, as noted, signed contracts of sale for their respective sections to Fred Baldridge.

The trial court's further findings, supported by the record, are as follows:

> Fred Baldridge performed under the contracts and brought all the tracts into compliance with Conservation Reserve Program requirements. A temporary cover crop of maize and hygeria was planted in 1959. The crop was allowed to fall in the field for the purpose of protecting the permanent cover crop to be planted the following year. Several miles of fence were constructed to complete enclosure of the farms. In 1960 Fred Baldridge planted a permanent cover of African Weeping Lovegrass. From 1960 to 1968 all that was required of Fred Baldridge to keep the farms in compliance was to replant several small areas in Weeping Lovegrass, control noxious weeds and repair fences when necessary to keep stock out of the fields.

ATTACHMENT 2

In return for Fred Baldridge's work, annual payments were made under the Conservation Reserve Program in the following totals:

Travis Taylor	$33,906.60
Sam Henderson	34,894.30
Thomas F. Adams	28,931.40
Henry E. Baldridge	26,371.20
Herman Terry	39,655.70
Fred Baldridge	28,551.00
Robert Draper	39,900.90

Payments on the land to or for Robert Draper were made by the participants in the following totals:

Travis W. Taylor	$22,162.14
Sam Henderson	19,445.40
Thomas Adams	18,686.46
Henry E. Baldridge, Jr.	17,174.43
Herman O. Terry	25,855.83
Fred Baldridge	32,016.23

Robert Draper, T. E. Baldridge and Fred Baldridge, without disclosing their intention to the other parties involved, agreed among themselves in 1958 that the entire farm would be sold for around $160,000.00. They then computed the payments to be made by the buyers to total about $210,000.00. The excess $50,000.00 was to be rebated to Fred Baldridge over the ten year period at the rate of $3,352.11 for the first six years and

$8,000.00 per year thereafter. This accounts for the $47,464.77 note Robert Draper executed in favor of Fred Baldridge on March 3, 1958, and under which he made payment of $3,352.11 in 1959.

The applicable regulations in force in 1959 provided in pertinent part:

"The total of all annual payments under the conservation reserve program to pay any producer for any year with respect to all farms in which he has an interest shall not exceed $5,000.00. . . . All or any part of the annual payment which otherwise would be due any producer may be withheld, or required to be refunded, if he has adopted or participated in adopting any scheme or device. . . or by any other means designed to evade, or which has the effect of evading the provisions of this section." 21 Fed. Reg. 6296, 8793 (1956).

"In the event the Secretary determines that there has been a violation of any contract during the time the producer has control of the farm, and that such violation is of such a substantial nature as to warrant termination of the contract, all rights to annual and cost share payments and grants under the contract shall

be forfeited and all such payments and grants received by the producer shall be refunded with interest at the rate of 6% per annum." 21 Fed. Reg. 6297 (1956).

In 1965 one of the relatives (Henderson) decided to drop out of the program and he refused to make his annual payment to Draper. However, the payment was made by Fred Baldridge's mother and Baldridge immediately withdrew from escrow Henderson's deed and the deed to the land of Draper, who obtained a Conservation Reserve contract on it. About this same time the contract on Draper's farm, that is the one that he had retained, expired. As to the farm that Draper had retained, that is A-109, Baldridge had the legal right to take possession of it. Notwithstanding this, however, Draper executed another deed in favor of Baldridge and Baldridge entered into an option agreement to purchase this farm and to lease it. He then applied to receive payments under the Cropland Adjustment Program, 7 U.S.C. §1838. On the assumption that he was a lessee, the government paid him $14,983.28.

The trial court found that the ultimate object of the program was to have the government pay the full purchase price of the farm. The court further found as evidencing the scheme that Baldridge withdrew all of the remaining warranty deeds from the relatives in March 1969, notwithstanding that under their terms they were not to be delivered until December 1969. The

district court, in addition, made the following findings of fact:

1. That Baldridge received kickbacks on rebates from Draper in the form of payments on Draper's $47,464.77 promissory note.

2. That in 1959 Baldridge received $3,684.00 directly from his Conservation Reserve Program contract annual payment, and in the same year he received an additional $3,352.11 in the form of a rebate from Robert Draper. The court was of the opinion that this of itself constituted a violation of the contract between Baldridge and the Conservation Reserve Program.

3. That the relatives realized little after payment of income tax on the amounts received.

4. That the relatives acted as agents for Fred Baldridge, who was found to have been the instigator of the plan, the purpose of which was to evade the maximum payment limitation causing the government to pay for a seven tract farm rather than a single tract.

The trial court refused, however, to allow recovery of double damages under the False Claims Act. The reason for this was that they had processed the case through the administrative procedure and obtained a full recovery from Baldridge of amounts paid to him and all of the other participants so that it would not be just to allow the government to elect to proceed under the False Claims Act after having previously

elected to proceed administratively. The government has cross-appealed on this issue.

In addition to the government's point just mentioned raised on cross-appeal, the issues revolve around these points posed by appellants:

1. The contention of appellants that the deeds were inoperative because they were in escrow, leaving Baldridge without the requisite interest.

2. The alleged insufficiency of the evidence to establish a scheme and whether the elements of actionable fraud are present.

3. The alleged insufficiency of the evidence to support the trial court's finding of a violation of the Cropland Adjustment Program, and its assessment of double damages and forfeiture thereunder.

I.

LEGALITY AND EFFECT OF THE DEEDS

Appellant Baldridge first argues that under New Mexico law a deed placed in escrow is effective as of the date of final delivery. He relies on the decision of the New Mexico Supreme Court in Mosley v. Magnolia Petroleum Co., 45 N.M. 230, 114 P.2d 740 (1941). Here two deeds were given, one of them conveying a one-half interest in minerals and the other one-fourth. They were deposited in a bank in escrow awaiting

payment of the purchase price in the amount of $800.00. The grantee obtained the deed conveying the one-half interest and did so unlawfully. He sold it to a third person for $800.00, first altering it. He then took the $800.00 back to the bank and received the deed to the undivided one-fourth. Subsequently, the previous owner sought to quiet title. The Supreme Court of New Mexico concluded that the deed originally given was void because it had not been delivered, because it had been fraudulently obtained from the escrow holder without complying with the agreement and, furthermore, had been illegally altered, and so the title of Mosley, the original owner, was recognized. This case is easily distinguishable. There the deed was illegally obtained from escrow and was invalidly altered. Assuming then that the law of New Mexico applies, the effect of this decision would not be that Baldridge would have no interest in the land. In truth he had all of the interest. Indeed, it was shown that he had ready access to the deeds should he need them. The relatives were thinly veiled agents who had renounced all interest in the property.

We are of the opinion that the trial court was eminently correct in ignoring the forms which were erected and recognizing the true facts. Counsel for Baldridge argues that this was all legal and therefore non-fraudulent. We disagree. The arrangement has the evidences of a devious sham which was designed to deceive. Its elaborate legal structure, while giving it the look of legality, does not bear scrutiny.

In sum, we need not here be concerned with the issue posed by appellants, namely, the effectiveness of the deeds. Our inquiry concerns the transaction in its entirety and whether it was a deceptive effort.

II.

THE CONTENTION THAT THE DEFENDANTS' CONDUCT WAS NOT FRAUDULENT

Defendants argue that Baldridge was not the sole or even the principal actor in this effort, whereby he can be held liable for all of the Conservation Reserve payments received by the transferees. As we have indicated above, the evidence shows that the participants-relatives were, so to speak, strawmen. They merely participated as agents of Baldridge by going through the formalities. They executed warranty deeds to Baldridge for a nominal consideration and Baldridge acted as owner of the farm throughout the period of the payments. His mother made the payment on behalf of Henderson when the latter defaulted and withdrew, and subsequently he treated the Henderson parcel as if it were his own. He also paid the real estate taxes on Draper's parcel.

The trial court relied on all of these factors in its holding that Fred Baldridge was the principal in developing a plan, scheme or device to evade the maximum payment limitation by dividing the farms and obtaining several payments rather than one. The trial court correctly found that the entire

transaction was conducted by Baldridge for his own benefit. The only tenable conclusion is that there was a fraud and that Baldridge perpetrated it.[1] The fact that it was not in the form of traditional false representations does not detract from the conclusion.[2]

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1. Generally, "fraud" consists of some deceitful practice or wilful device resorted to for the purpose of inducing another, in reliance upon it, to surrender money, property, or legal rights, and it connotes perjury, falsification, concealment and misrepresentation. See Knauer v. United States, 328 U.S. 654 (1946); J. F. White Engineering Corp. v. General Ins. Co. of Amer., 351 F.2d 231 (10th Cir. 1965); Nichoalds v. McGlothlin, 330 F.2d 454 (10th Cir. 1964); 37 C.J.S. Fraud §1.

2. See S.E.C. v. Capital Gains Research Bureau, 375 U.S. 180, 84 S.Ct. 275 (1963) where the Supreme Court concluded that statutory "fraud or deceit" need not be interpreted technically so as to require the traditional misstatement and intent to injure, which are necessary elements of common law fraud. Rather Congressional enactments and administrative regulations should be interpreted broadly and liberally in order to effectuate their essential purposes.

ATTACHMENT 2

The applicable federal regulation, 7 C.F.R. §750.164, provides for a maximum payment limitation of $5,000.00 to any producer for any year with respect to all farms in which he has an interest. The regulation further provides that it is a violation of the contract if the producer has adopted or participated in adopting a scheme or device, the effect of which is to evade or exceed the maximum payment limitation. See C.F.R. §750.294(i). Money received contrary to the maximum payment limitation is forfeited under 22 Fed. Reg. 4781(1957) and 25 Fed. Reg. 1868(1960), so both the letter and spirit of the regulations cover the problem at bar.

As previously noted, Baldridge was the principal actor and qualified as a producer pursuant to 7 C.F.R. §750.150(q). Moreover, the other relatives, including Travis Taylor and Herman Terry, do not meet the definition contained in the mentioned regulation and thus the court was correct in exonerating them.

III.

CONTENTION THAT APPELLANTS DID NOT VIOLATE CROPLAND ADJUSTMENT PROGRAM

Baldridge seeks to reverse the district court's additional $31,966.56 judgment against him under the False Claims Act for fraudulent violation of the Cropland Adjustment Program (C.A.P.) under the Food and Agricultural Act of 1965, see 7 U.S.C. §1838 and the applicable regulations,

7 C.F.R. §751.101 et seq.[3] The evidence discloses that Fred Baldridge received C.A.P. payments by representing to the government that 1) he was a cash lessee of the farm and 2) the farm had not changed hands during the preceding three years. Baldridge supported these representations by recording a ten-year farm lease agreement entered into with Robert Draper. In actuality, however, Fred Baldridge was the owner of the land in question, a valid deed to the property having been delivered to him on January 1, 1966. Baldridge, therefore, created the artificial lessee relationship for the purpose of the claim.

The Baldridge argument is again a legalistic one, that the delivery of the deed was not effective to pass title in the absence of intention by both the grantor and grantee, who now claim that the deed was held by Baldridge solely for security. Both the argument and the lease are transparent and unconvincing. The evidence established that Robert Draper had deeded the property to Baldridge in 1958. The deed was delivered in 1966, but was not recorded. The trial court

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3. This claim was not presented in the administrative proceeding but was raised by the government for the first time at the trial de novo in district court. Thus, the government is not seeking to exploit an area in which it has already had a recovery as in Part II above.

found that the subsequently recorded farm lease was wholly fictitious and presented solely for the purpose of causing the United States to pay to Baldridge money to which he knew he was not entitled. The court's finding was supported by the facts presented. Like his efforts to receive Conservation Reserve payments, Baldridge's actions in this endeavor were also designed to procure government payments which were not rightfully his.[4] True, this transaction is less circular and complex than the others, but it is no less deceptive in nature.

We see no basis for disturbing the trial court's ruling.

IV.

THE QUESTION WHETHER THE GOVERNMENT IS ENTITLED TO DOUBLE DAMAGES UNDER THE FALSE CLAIMS ACT

In the counterclaim of the government which was filed in the action which Baldridge brought seeking to set aside the A.S.C. award, the government sought double or penalty damages under the False Claims Act, 31 U.S.C. §231 et seq. which provides for the payment of the penalty sum of $2,000.00 and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing of such act. The trial

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4. Compare Fleming v. United States, 336 F.2d 475 (10th Cir. 1964).

court denied the government's claim under the False Claims Statute on the basis that it was inconsistent and unjust to allow the government to proceed under the Soil Bank Act initially and then subsequently to file another and different claim under the False Claims Act.[5]

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5. The trial court said:

> . . . The government has introduced evidence which is clearly and convincingly persuasive that recovery could be allowed against Fred Baldridge under a common law fraud theory. The evidence which supports the committee's conclusion is equally convincing that Fred Baldridge knowingly perpetrated a fraud upon the government. However, a recovery under a common law fraud theory would be no greater than the recovery already allowed by sustaining the committee action. Thus the necessity for further discussion of a common law fraud recovery is obviated. It should be noted that if the administrative procedure had been inadequate or unavailable to sustain the full recovery of $232,211.10 against Fred Baldridge, the government would be entitled under the evidence in this cause to a judgment in that amount against him for common law fraud.

We agree with the trial court's conclusion on this. The principle which comes to mind is that of the incompatibility of the remedies of rescission and damages. It does not tolerate vacillating from one remedy to another.[6]

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5. (continued)

> Recovery will not be allowed against Fred Baldridge under the False Claims Act. Having proceeded through the administrative process and obtained a full recovery from Baldridge of all amounts paid to him and the other participants, it would not now be just to allow the government to elect to proceed under the False Claims Act and recover the double damages provided thereunder.

6. This doctrine is discussed in 1B J. Moore, Federal Practice Section 0.405, at 764-65 (2d ed. 1953) as follows:

> . . . An election of the substantive right to affirm extinguishes the substantive right to disaffirm. And so an attempt to invoke the remedy of rescission after an action on the contract may fail, not because of election of inconsistent

ATTACHMENT 2

At bar the government's action in pursuing the administrative remedy is in the nature of a rescission of the contracts which it had with the

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6. (continued)

> remedies, but because the plaintiff no longer has the substantive right to disaffirm.
>
> The result in other cases decided upon the basis of election of remedies can often be justified today upon general principles of res judicata. In those jurisdictions where a litigant can present all the bases for a claim, whether legal or equitable, inconsistent, alternative or hypothetical, in a single action, failure to invoke all "inconsistent remedies" in an initial suit which goes to final judgment on the merits should preclude their assertion in subsequent litigation between the parties and their privies--not because of election of remedies, but because a final judgment on the merits is res judicata as to all matters pertaining to a single cause of action which might have been litigated.

several persons involved and a claim for restitution of the money paid out in the mistaken belief that the demands were bona fide and valid. The essential nature and character of the false claims demand is, on the other hand, an action in damages seeking recovery of the penalties provided by statute. We disagree with the government's argument that these remedies are supplemental to any other remedies provided by law. There are no decisions which deal with the identical issue presented in our case either from this Circuit or elsewhere. We are persuaded, nevertheless, that the trial court's reasoning is valid. Both claims arise from the identical set of facts, and in these circumstances at least it is unfair to allow the government to compound its measure of damages by proceeding under a supplemental remedy.

There had been an adjudication on the one theory at the administrative level prior to the filing of the action in court, and so the test of res judicata suggested by Professor Moore is also present.

Accordingly, it is our view that the trial court ruled correctly on this, and, therefore, the government's cross-appeal must be denied.

The judgment of the district court is affirmed.

ATTACHMENT 2A
UNITED STATES COURT OF APPEALS TENTH CIRCUIT

JANUARY TERM - JANUARY 30, 1974

Before Honorable David T. Lewis, Chief Judge, Honorable Delmas C. Hill, Honorable Oliver Seth, Honorable William J. Holloway, Jr., Honorable Robert H. McWilliams, Honorable James E. Barrett, Honorable William E. Doyle and Honorable Ruggero J. Aldisert*, Circuit Judges

(*Of the Third Circuit.)

FILED
JAN 30 1974
HOWARD K. PHILLIPS,
CLERK, UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FRED BALDRIDGE, TRAVIS W. TAYLOR and HERMAN D. TERRY,

Plaintiffs-Appellants,

v.

JOHN R. HADLEY, J. D. MONTOYA and ED GARY, individually and as members of THE NEW MEXICO STATE AGRICULTURAL STABILIZATION and CONSERVATION COMMITTEE; and CLIFFORD M. HARDIN as Secretary of Agriculture of the United States, COMMODITY CREDIT CORPORATION,

Defendants-Appellees,

UNITED STATES OF AMERICA,

Intervenor-Appellee, Cross-Appellant.

Nos. 73-1320 and 73-1321

ATTACHMENT 2A

This matter comes on for consideration of appellants' motion to enlarge petition for rehearing and petition for rehearing en banc.

Upon consideration whereof, appellants' motion to enlarge the petition for rehearing is granted. It is further ordered that the petition for rehearing is denied by Circuit Judges Seth, Aldisert and Doyle, to whom the cases were argued and submitted.

The petition for rehearing having been denied by the original panel to whom the cases were argued and submitted, and no member of the panel nor judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, Rule 35, Federal Rules of Appellate Procedure, the petition for rehearing en banc is denied.

HOWARD K. PHILLIPS, Clerk

By: /s/ Lavon M. Irlbeck
Deputy Clerk

ATTACHMENT 3

PROMISSORY NOTE

$21,836.10 Clovis, New Mexico
March 3, 1958

For value received, the undersigneds promise to pay to the order of Robert Draper, of Seagraves, Texas, Twenty-one Thousand Eight Hundred Thirty-six and 10/100 Dollars ($21,836.10) at the Citizens Bank of Clovis, Clovis, New Mexico, as follows: $2,183.61 on December 15, 1959, and on the same day for ten years thereafter until the entire amount is paid, the principal sum drawing no interest. To secure this note there has been given a mortgage on certain real estate in Lea County, State of New Mexico, on 640 acres of land, more or less, and in case suit or action is instituted to collect this note or foreclose said mortgage, payee and his assignees agree to look solely to the property described in said mortgage for the satisfaction of this note and mortgage as this note is given under the consideration that no deficiency judgment shall be entered against the undersigneds.

/s/ Thomas Fred Adams

/s/ Jo Ann Adams

Ex. 15

ATTACHMENT 4

MORTGAGE

Thomas Fred Adams and Jo Ann Adams, his wife, for consideration paid grant to Robert Draper, the following described real estate in Lea County, New Mexico:

The surface rights only to:
Section One (1), Township Nine (9) South, Range Thirty-six (36) East, N.M.P.M.

with mortgage covenants.

This mortgage secures the performance of the following obligation:

One promissory note in the principal amount of $21,836.10, dated March 3, 1958, bearing no interest, payable $2,183.61 annually for ten years commencing December 15, 1959, said note not being subject to deficiency judgment,

and is upon the statutory mortgage condition for the breach of which it is subject to foreclosure as provided by law. The amount specified for insurance as provided in the statutory mortgage condition is $_____ and the hazard_____ to be insured against _____fire_____.

WITNESS our hands and seals this 3rd day of March, 1958.

/s/ Thomas Fred Adams (SEAL)

/s/ Jo Ann Adams (SEAL)

ATTACHMENT 4

STATE OF TEXAS)
) ss.
COUNTY OF LUBBOCK)

On this 16 day of Feb., 1959, before me personally appeared Thomas Fred Adams and Jo Ann Adams, his wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Witness my hand and seal the day and year last above written.

/s/ Bates Witt
Notary Public

My commission expires June 1, 1959.

STATE OF NEW MEXICO, County of Lea, ss. I hereby certify that this instrument was filed for record on the 27th day of Feb., 1959, at 2:40 o'clock PM, and duly recorded in Book 160, page 94, of the Records of Mortgages of said county.

/s/ Virgil Love
County Clerk.

By W. E.
Deputy.

Ex. 42

ATTACHMENT 5

Form CSS-511 (SOIL BANK)
(6-58-57)

U. S. DEPARTMENT OF AGRICULTURE
COMMODITY STABILIZATION SERVICE

FORM APPROVED
BUDGET BUREAU NO. 40-R2280. 1

SOIL BANK
CONSERVATION RESERVE CONTRACT

ACRES IN FARM	STATE	COUNTY
640.0	New Mexico	Lea
AERIAL PHOTO. NO.	**CODE AND FARM NO.**	**CONTRACT NO.**
1P-165	85-013-1105	SU-59-68

PART I - FARM IDENTIFICATION AND ACREAGE DATA

A. LOCATION OF FARM

Section 1, T-9S, R-36E

B. FARM SOIL BANK BASE: ACRES

Regular Base .....

Fallow Rotation System:

Odd years .....

Even years: .....

PART II - CONSERVATION RESERVE ACREAGE, PRACTICES, AND ANNUAL PAYMENT

FIELD IDENTIFICATION (A)	PRACTICE DESCRIPTION (DETAILS ON FORM CSS-510 (SOIL BANK)) (B)				CONTRACT PERIOD		ANNUAL PAYMENT RATE PER ACRE				
	CHECK ONE		PRACTICE		BEGIN. (C)	TERM (D)	SIGNUP		NON-DIVERSION		MAXIMUM DOLLARS
	ESTABLISH AND MAINTAIN	MAINTAIN	NO.	NAME			ACRES (E)	RATE $ (F)	ACRES (G)	RATE $ (H)	
1. Field 1, Sec. 1, T-9S, R-36E	X		A-2	Perm. Cover-Grass	1959	1968	640	6.00			3,840.00
2.											3,122.20
3.											
4.											

PART III - PRODUCERS SIGNATURES, CERTIFICATION AND ANNUAL PAYMENTS SHARES

The undersigned producers hereby agree to the terms and conditions of this contract and certify that all the producers having any control of the farm during the entire contract period and all of the producers who are entitled to payment under this contract are shown in this Part III, or on the continuation sheet attached hereto, and each undersigned producer certifies that he has not entered into conservation reserve contracts, including this contract, under which the aggregate of his shares of the annual payments for any year for all farms in which he has an interest will exceed $5,000.00, or such larger amount as may be authorized by the Secretary of Agriculture.

NAMES AND ADDRESSES OF PRODUCERS (A)	ANNUAL PAYMENT SHARE LINE 1 % (B)	LINE 2 % (C)	LINE 3 % (D)	LINE 4 % (E)	SIGNATURES OF PRODUCERS (F)	DATE (G)
(a) OPERATOR 1. Tommy Adams, 2401 19th, Lubbock, Texas	100				✓ Tommy Adams	1-5-59
OWNER (IF OTHER THAN OPERATOR) 4. Same						
7.						
8.						

PART IV - APPROVAL FOR SECRETARY OF AGRICULTURE

SECRETARY OF AGRICULTURE:

By Lee Berry Lee (ASC COUNTY COMMITTEEMAN) 1-4-59 (DATE)

PART V—TERMS AND CONDITIONS

1. Each of the owners or operators (herein referred to as "contract signer") whose signature appears in Part III above hereby agrees to participate in the conservation reserve program and fully understands that his participation therein is subject not only to all of the provisions of this contract, but also to all of the provisions of the regulations issued by the Secretary governing the conservation reserve program. Such regulations, which are hereby made a part of this contract, are hereinafter referred to as "the Regulations." No amendment or revision of, or supplement to, the Regulations which becomes effective after the date that this contract is executed shall be applicable to this contract if such amendment, revision, or supplement imposes any obligation on the contract signer greater than or in addition to the obligations set forth herein or diminishes the obligations of the Secretary hereunder.

2. (a) The tract(s) of land identified under "Field Identification" in Part II hereof shall be the conservation reserve.

(b) (1) If a conservation practice is to be carried out on the conservation reserve, as shown in Part II above, the contract signer shall carry out the practice as soon as practicable after the execution of this contract and in accordance with the specifications which shall be obtained from the office of the county committee, and shall maintain the practice in accordance with good farming practice during the entire contract period.

(2) If an approved cover is already established on the conservation reserve, as shown in Part II above, the contract signer shall maintain the cover in accordance with good farming practice during the entire contract period.

(3) Failure to maintain the conservation practice in accordance with good farming practice for the entire contract period shall constitute a violation of this contract.

(c) No crop shall be harvested from the conservation reserve during the contract period except timber in accordance with sound forestry management as determined by the county committee and wildlife or other natural products of such acreage which do not increase supplies of food for domestic animals. No Christmas trees, ornamentals, or Christmas greens may be harvested from the conservation reserve during the contract period. No water from water storage for which cost-sharing was received under this contract shall be used for irrigation on the farm except for crops on the conservation reserve. The conserva-

tion reserve shall not be grazed during the contract period unless the Secretary, after certification by the Governor of the State in which the farm is located of the need for grazing on the conservation reserve, determines that it is necessary to permit grazing thereon in order to alleviate damage, hardship, or suffering caused by severe drought, flood, or other natural disaster and gives written consent to such grazing: *Provided*, That grazing in accordance with sound pasture management principles may be authorized by the Secretary after the first 3 years of the contract period.

(d) Producers who carry out the conservation practice shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary to the performance and maintenance of the practices in keeping with applicable laws and regulations. The producer with whom the cost of the practice is shared shall be responsible to the Federal Government for any losses it may sustain because he infringes on rights of others or fails to comply with applicable laws or regulations.

(e) The contract signer shall without reimbursement hereunder take such steps as may be prescribed by the county committee to prevent the conservation reserve from becoming a source of spreading noxious weeds designated by the State committee. A list of such noxious weeds will be available in the office of the county committee, and the contract signer shall obtain such information from that office.

(f) The conservation reserve shall be in addition to any acreage placed in the Acreage Reserve Program.

3. The contract signer agrees not to devote an acreage on the farm during any year of the contract period to Soil Bank base crops in excess of the number of acres of such crops permitted, as shown in Part I above, and not to harvest an acreage of such crops in excess of the number of acres permitted to be devoted to such crops. If the contract signer knowingly and willfully harvests any crop in violation of this section he shall be subject to the civil penalty referred to in section 12 of this contract. The contract signer shall not be deemed to have harvested an acreage in excess of that permitted unless the acreage harvested exceeds the number of acres permitted by more than 3 acres or 3 per centum of the acreage permitted, whichever is larger.

4. (a) Federal cost-sharing for carrying out the practices listed in Part II above shall be made to the producers carrying out such practices at the rates specified on CSS Form-815 (Soil Bank) issued with respect to this contract, which form is hereby made a part of this contract. Payment of cost-shares for conservation practices carried out on the conserva-

tion reserve will be made only upon application submitted on the prescribed form to the office of the county committee by June 30 of the year following the calendar year in which the practice is completed. If any part of the Federal cost-share for carrying out a practice is in the form of conservation materials or services, the furnishing of such conservation materials and services shall be subject to the provisions in the Regulations governing the furnishing of such materials and services.

(b) Subject to the provisions of paragraph (c) of this section, an annual payment shall be made for each calendar year during the contract period as soon as practicable after the county committee has determined the acreage devoted to Soil Bank base crops and other uses on the farm. Such payment shall be in an amount determined by multiplying the rate or rates per acre specified in Part II above by the number of acres determined as follows:

(1) In the case of farms on which any acreage is placed in the conservation reserve at the regular rate including farms on which acreage is also placed in the conservation reserve at the non-diversion rate—(A) the number of acres used in computing the amount of the annual payment for any year at the regular rate shall be the smaller of (i) the acreage placed in the conservation reserve at the regular rate, or (ii) the number of acres by which the acreage devoted to Soil Bank base crops on the farm for such year is less than the farm Soil Bank base, as shown in Part I above, for such year, and (B) the number of acres used in computing the amount of the annual payment for any year at the non-diversion rate shall be the number of acres, if any, placed in the conservation reserve at the non-diversion rate.

(2) In the case of farms on which the entire acreage in the conservation reserve is placed in the conservation reserve at the non-diversion rate, the number of acres which shall be used in computing the amount of the annual payment for any year shall be the number of acres placed in the conservation reserve, less the number of acres, if any, by which the acreage devoted to Soil Bank base crops on the farm for such year exceeds the farm Soil Bank base.

(c) No payment shall be made, and the producer shall be considered in violation of his contract in any year in which the acreage devoted to Soil Bank base crops exceeds the number of acres of such crops permitted under the contract by more than 3 acres or 3 per centum of the number of acres permitted, whichever is larger.

(d) The annual payment shall be divided among the producers on the farm as shown in Part III above.

(e) The total of all annual payments under the conservation reserve program to any producer for any year with respect to all farms in which he has an interest shall not exceed $5,000 unless a larger amount is specifically approved by the Secretary in accordance with the Regulations.

(f) If any part of the conservation reserve is grazed, with the consent of the Secretary as provided in section 2 (c), during the first 3 years of the contract period, no annual payment will be made for such part of the conservation reserve for the year in which grazed, and if any part of the conservation reserve is grazed, with the consent of the Secretary, after the first 3 years of the contract period, such annual payment shall be at a rate determined in accordance with regulations to be issued by the Secretary.

5. No person shall be eligible for compensation for any year under this contract if for such year (a) the acreage of cotton, rice, or tobacco on the farm exceeds the allotment for such commodity; or (b) the acreage of wheat on the farm, in the case of a farm in the commercial wheat-producing area exceeds the larger of the allotment for wheat or 15 acres; or (c) the acreage of corn on the farm, in the case of a farm in the commercial corn-producing area, exceeds the Soil Bank corn base or the allotment, whichever is applicable; or (d) the acreage of peanuts on the farm exceeds the larger of the allotment for peanuts or one acre. For purposes of this section such acreage limitations shall not be deemed to have been exceeded unless under the rules and regulations governing eligibility for price support for the commodity such acreage limitations would be determined to have been knowingly exceeded.

6. The number of acres in the conservation reserve and the number of acres devoted to Soil Bank base crops on the farm shall be determined as provided in the Regulations.

7. Cost-shares and annual payments may be assigned as provided in the Regulations.

8. (a) In case of death, incompetency, or disappearance of any producer, any Federal cost-share or other payment under the contract due him shall be made to his successor, as determined in accordance with provisions of regulations issued by the Secretary (7 C. F. R. Part 1108), or any amendments thereto, for payments made pursuant to section 8 of the Soil Conservation and Domestic Allotment Act, as amended.

(b) The loss of control of the farm by sale or otherwise by any owner signatory to the contract, or by any cash tenant, standing-rent tenant or fixed-

rent tenant who has a lease for the entire contract period and who signed the contract in lieu of the owner, shall terminate the contract as to such producer. In the event of such termination, the producer losing control shall not be entitled to further compensation under the contract and shall refund all Federal cost-shares received by him under the contract unless the producer who acquires his interest in the farm is or becomes a party to the contract and assumes all obligations thereunder. The loss of control by any contract signer shall not affect the rights and obligations of all other producers who signed the contract.

(c) If, after the contract is signed but before the crops are planted on the farm, a tenant or sharecropper is substituted for a tenant or sharecropper who is not signatory to the contract, the share of the original tenant or sharecropper in the annual payment shall be made to the substituted tenant or sharecropper. If such substitution occurs after the crops are planted on the farm, the original tenant or sharecropper shall be entitled to the share of the annual payment as specified in the contract.

9. The contract shall be deemed to have been violated if violation by the contract signer of any of the provisions of the Regulations relating to tenants and sharecroppers is discovered after the signing of the contract, or if, after the signing of the contract, the contract signer enters into any lease, contract, agreement, or understanding with any tenant or sharecropper of the nature prohibited by the Regulations, or adopts any scheme or device for the purpose of depriving any tenant or sharecropper of his payment or any other right under the contract.

10. (a) In the event the Secretary determines that there has been a violation of any contract during the time the contract signer has control of the farm, and that such violation is of such a substantial nature as to warrant termination of the contract, all rights to annual and cost-share payments and grants under the contract shall be forfeited and all such payments and grants received by the contract signer shall be refunded with interest at the rate of six per centum per annum. The contract signer will be obligated to refund all such payments and grants received not only by him but also by any tenant or sharecropper who is not signatory to the contract. Any such tenant or sharecropper shall also be obligated to refund any such payment or grant received by such tenant or sharecropper.

(b) In the event the Secretary determines that there has been a violation of any contract but that such violation is of such a nature as not to warrant

termination of the contract, rights to annual and cost-share payments and grants under the contract shall be adjusted, forfeited and refunded as the Secretary determines to be appropriate. The contract signer will be obligated to accept such adjustments, forfeit such benefits, and make such refunds to the United States of annual and cost-share payments and grants received not only by him but also by any tenant or sharecropper not signatory to the contract as the Secretary determines to be appropriate. Any such tenant or sharecropper will also be obligated to refund, forfeit, and accept such adjustment in annual and cost-share payments and grants paid or otherwise payable to such tenant or sharecropper as the Secretary determines to be appropriate. The Secretary may require payment of interest at a rate not in excess of six per centum on any refund provided for herein.

(c) The determination as to whether a violation has occurred, and whether such violation is of such a substantial nature as to warrant termination of the contract, and the amount of any adjustment, forfeiture or refund, shall be made in accordance with regulations issued by the Secretary.

11. (a) The farm covered by this contract is based on the definition of a farm as used in establishing acreage allotments under the Agricultural Adjustment Act of 1938, as amended. If, after the signing of this contract, a farm is defined differently for purposes of acreage allotments than a farm is defined at the time this contract is signed, such new definition shall, at the election of the Secretary, apply to the contract from the effective date of such new definition or such later date as the Secretary may specify.

(b) If the farm covered by this contract is later combined with other land or is later divided among two or more farms, as a result of a change in the definition of a farm or otherwise, the provisions of this contract shall apply to the farm on which the conservation reserve is located after the farm is reconstituted. In such case the contract shall be modified to reflect the change in the Soil Bank base and the acreage permitted to be devoted to Soil Bank base crops resulting from such reconstitution. The contract signer shall report promptly to the county committee the sale of any land comprising the farm covered by this contract or the purchase or lease of additional land which together with any land on the farm covered by this contract is operated as one unit with respect to the rotation of crops during the contract period.

12. Section 123 of the Soil Bank Act (70 Stat. 188, 198) imposes a civil penalty upon any producer who

knowingly and willfully grazes or harvests any crop from any acreage in violation of a contract under the conservation reserve program equal to 50 per centum of the compensation payable for compliance with such contract for the year in which the grazing or harvesting occurred. Such penalty is in addition to any amounts required to be forfeited or refunded under other provisions of this contract.

13. Any amounts due any producer hereunder shall be subject to setoff as provided in the Regulations.

14. The contract signer shall not file a claim for a payment to which he knows he is not entitled under the provisions of this contract, including a claim for a cost-share payment for practices not carried out or for practices carried out in such a manner that they do not meet the required specifications therefor, and the filing of any such claim shall constitute a violation of the contract.

15. The contract signer shall not knowingly use a purchase order issued to him for conservation materials or services for a purpose other than that for which it was issued, and the misuse of a purchase order shall constitute a violation of the contract.

16. County committeemen or their representatives, or any other authorized representatives of the Secretary, for the purpose of ascertaining the accuracy of any of the representations made in or in connection with this contract and the performance of the terms and conditions of this contract, shall have the right to enter the farm at any reasonable time in order to measure the acreage or determine the production of any agricultural commodity on the farm, and to examine any records pertaining to the farm or to the acreage, production or sale of any such agricultural commodity, and the contract signer shall furnish such information relating to the farm as may be required by county committeemen or their representatives or authorized representatives of the Secretary.

17. Any dispute concerning a question of fact arising under the contract, except contract violations (which are governed by separate regulations, see section 10 hereof), which is not disposed of by agreement, shall be decided by the State committee, in accordance with the provisions therefor contained in the Regulations. The decision of the State committee, unless determined by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious, or so grossly erroneous as necessarily to imply bad faith, be final and conclusive.

18. As used in this contract the following terms shall have the following meanings:

(a) "Secretary" means the Secretary of Agriculture of the United States, or the officer, employee, or other

representative of the United States Department of Agriculture acting in his stead pursuant to delegated authority.

(b) "Farm Soil Bank base crops" means crops produced for harvest on the farm other than (1) annual grasses pastured or cut for hay or ensilage, (2) biennial legumes, (3) perennial grasses and legumes, (4) annual legumes except soybeans, cowpeas, peanuts, field and canning peas, and field and canning beans, and (5) a garden primarily for home consumption. Annual grasses from which a crop of seed or grain is harvested shall not be considered as used for pasture, hay or ensilage.

(c) "Allotment" means the acreage allotment established for a farm pursuant to the Agricultural Adjustment Act of 1938, as amended.

(d) "Soil Bank corn base" means the corn base acreage determined for a farm pursuant to the Soil Bank Act.

(e) The terms defined in the Regulations shall have the same meaning when used in this contract.

U. S. GOVERNMENT PRINTING OFFICE: 1956

ATTACHMENT 6

CONTRACT

THIS AGREEMENT made this day by and between Fred Baldridge of Route 2, Box 238, Portales, New Mexico, hereinafter referred to as Buyer, and Thomas Fred Adams and Jo Ann Adams, his wife, of Lubbock, Texas, hereinafter referred to as Sellers,

BE IT REMEMBERED:

That in consideration of the mutual covenants and other considerations herein contained, the parties do agree as follows:

1. That Sellers agree to sell and Buyer agrees to buy the surface rights to the following described lands in the State of New Mexico, to-wit:

Section One (1), Township Nine (9) South, Range Thirty-six (36) East, N.M.P.M., Lea County, State of New Mexico.

2. That the purchase price of said 640 acres of land, more or less, shall be the performance by Buyer of all cultivation and seeding required for the qualification of said land for the maximum payments by the Department of Agriculture pursuant to the Conservation Reserve Program under the Soil Bank Act, also known as the Agricultural Act of 1965 for the ten year program commencing in the year 1959. Provided, that Sellers agree to pay to Buyer any and all sums received by Sellers from the Department of Agriculture under said Act for said cultivation and seeding, of every kind

and nature, whether now provided for in said act and the regulations thereunder or hereinafter provided by any future amendments thereto or regulations promulgated under said Act; that all said payments shall be made to Buyer within not more than 15 days after the receipt thereof by Sellers.

3. That the parties hereto mutually designate The Citizens Bank of Clovis, Clovis, New Mexico, as Escrow Agent, and there is delivered with this Contract a good and sufficient Warranty Deed running from Sellers to Buyer. That the parties hereby authorize the Escrow Agent to deliver to Buyer the herein escrowed deed on December 16, 1969.

IN WITNESS WHEREOF, we have hereunto placed our hands and seals this 16 day of February, 1959.

/s/ Thomas Fred Adams

/s/ Fred Baldridge /s/ Jo Ann Adams

Ex. 23

ATTACHMENT 7

WARRANTY DEED

Robert Draper, a single man, for consideration paid, grants to Thomas Fred Adams and Jo Ann Adams, his wife, the following described real estate in Lea County, New Mexico:

The surface rights only to:
Section One (1), Township Nine (9) South, Range Thirty-six (36) East, N.M.P.M.

with warranty covenants.

WITNESS my hand and seal this 3rd day of March, 1958.

/s/ Robert Draper (SEAL)

STATE OF NEW MEXICO) ss.
COUNTY OF CURRY)

On this 3rd day of March, 1958, before me personally appeared Robert Draper, a single man, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Witness my hand and seal the day and year last above written.

/s/ Lynell G. Skarda
Notary Public

My commission expires October 27, 1960

STATE OF NEW MEXICO, County of Lea, ss. I hereby certify that this instrument was filed for record on the 5th day of March, 1958, at 8:40 o'clock AM, and duly recorded in Book 220, page 298, of the Records of Deeds of said county.

/s/ John Love County Clerk.
By W.E. Deputy.

ATTACHMENT 7A

WARRANTY DEED

Thomas Fred Adams and Jo Ann Adams, his wife, for consideration paid, grant to Fred Baldridge, the following described real estate in Lea County, New Mexico:

The surface rights only to:
Section One (1), Township Nine (9) South, Range Thirty-six (36) East, N.M.P.M.

with warranty covenants.

WITNESS our hands and seals this 16 day of Feb., 1959.

/s/ Thomas Fred Adams (SEAL)
/s/ Jo Ann Adams (SEAL)

STATE OF TEXAS)
) ss.
COUNTY OF LUBBOCK)

On this 16 day of Feb., 1959, before me personally appeared Thomas Fred Adams and Jo Ann Adams, his wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Witness my hand and seal the day and year last above written.

/s/ Bates Witt
Notary Public

My commission expires June 1, 1959.

STATE OF NEW MEXICO, County of Lea, ss. I hereby certify that this instrument was filed for record on the 7 day of March, 1969, at 1:40 o'clock PM, and duly recorded in Book 313, page 599, of the Records of Deeds of said county.

/s/ Effie Haldiman County Clerk.
By J.S. Deputy.

ATTACHMENT 8

RELEASE OF MORTGAGE

Robert Draper, mortgagee under a certain mortgage executed by Thomas Fred Adams and Jo Ann Adams, his wife, on the Third day of March, 1958, and recorded in Book 160, page 94 of the records of Lea County, New Mexico, does hereby discharge all of the real estate mentioned in said mortgage from the lien and operation thereof.

WITNESS his hand and seal this _____ day of _____, 19____.

/s/ Robert Draper (SEAL)

ACKNOWLEDGMENT
INDIVIDUAL

STATE OF TEXAS }
COUNTY OF PARKER } ss.

On this 3rd day of March, 1969, before me personally appeared Robert Draper, as Mortgagee, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Witness my hand and seal the day and year last above written.

/s/ Shirley M. Horning
Notary Public

My Commission Expires June 1, 1969

STATE OF NEW MEXICO, County of Lea, ss. I hereby certify that this instrument was filed for record on the 7 day of March 1969, at 1:40 o'clock PM, and duly recorded in Book 275, page 26, of the Records of Mortgages of said county.

/s/ Effie Haldiman County Clerk.

By J.S. Deputy.

ATTACHMENT 9

DEPARTMENT OF AGRICULTURE APPROPRIATIONS FOR 1960

HEARINGS

BEFORE THE

SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH CONGRESS

FIRST SESSION

SUBCOMMITTEE ON THE DEPARTMENT OF AGRICULTURE AND RELATED AGENCIES APPROPRIATIONS

JAMIE L. WHITTEN, Mississippi, *Chairman*

FRED MARSHALL, Minnesota
WILLIAM H. NATCHER, Kentucky
ALFRED E. SANTANGELO, New York
H. CARL ANDERSEN, Minnesota
WALT HORAN, Washington
ROBERT H. MICHEL, Illinois

ROSS P. POPE, *Staff Assistant to the Subcommittee*

PART 3

AGRICULTURAL MARKETING SERVICE
COMMODITY EXCHANGE AUTHORITY
COMMODITY STABILIZATION SERVICE
FARM CREDIT ADMINISTRATION
FARMERS HOME ADMINISTRATION
FOREIGN AGRICULTURAL SERVICE
LANGUAGE CHANGES AND GENERAL PROVISIONS
LIBRARY
OFFICE OF THE GENERAL COUNSEL
OFFICE OF INFORMATION
OFFICE OF THE SECRETARY
RURAL ELECTRIFICATION ADMINISTRATION
SECRETARY OF AGRICULTURE
SOIL BANK PROGRAMS

Printed for the use of the Committee on Appropriations

Y4. AP 6/1: AG 8/960/ PT.3

33913 WASHINGTON : 1959

Mr. WHITTEN. The past fiscal year up to date, to the point you have them.

Mr. BUCY. Fine. We will take them for 1958 and then for the 9 months following that.

(The information referred to follows:)

Administrative proceedings under the Packers and Stockyards Act (July 1, 1957–Mar. 19, 1958)

Type	Pending July 1, 1957	Initiated July 1, 1957–June 30, 1958	Completed July 1, 1957–June 30, 1958	Pending June 30, 1958	Initiated July 1, 1958–Mar. 19, 1959
Rate	4	29	32	1	13
Disciplinary	33	76	41	68	66
Reparation	6	41	13	34	32
Total	43	146	86	103	111

SOIL BANK PROGRAM

Mr. WHITTEN. I would like to have the same information with regard to actions that may have been taken in connection with the acreage reserve and conservation reserve programs.

Mr. FARRINGTON. Yes, sir.

(The information referred to follows:)

As pointed out in the statement on page 56 of part I of the hearings, a separate staff has been established in the Washington Office of the General Counsel under the supervision of Mr. Claude T. Coffman to perform the legal work in connection with the soil bank. This staff consists of three other attorneys besides Mr. Coffman. In addition to this separate staff, the services of other attorneys in the Washington office are drawn upon where the soil-bank work is interrelated with the work of other programs, such as the acreage allotment and marketing quota program and the agricultural conservation program. In the field, legal work in connection with the soil bank is handled by the field offices of the Office of the General Counsel. The total average number of positions in the Washington office and the field offices presently involved in soil-bank work is nine lawyers and six nonprofessionals.

As a major new legislative enactment, the Soil Bank Act required substantial legal assistance by this office in rendering advice in answering difficult legal questions involving the initial interpretation and application of the act. In addition, a great deal of legal assistance was required in preparing the basic regulations governing both the acreage reserve program and the conservation reserve program, and the regulations establishing administrative procedures for handling violations under the soil bank. Legal assistance was also required in preparing the necessary contracts, instructions, forms, and procedures to implement the program. Many important interpretations of the Soil Bank Act had to be made in the formulation and development of the program. The program also required the rendering of opinions and advice with respect to a great many other novel and important legal problems. Attorneys of this office, both in Washington and the field, also rendered advice in connection with the day-to-day operations of the program. This included the consideration of a great many individual cases involving the determination of the rights of the Government and the producers concerned, and violations under the program.

In connection with such work, a total of 686 written opinions and memoranda have been prepared by this office in Washington and the field, of which 496 deal with the acreage reserve and 190 with the conservation reserve. In addition, 923 letters and memoranda dealing with the soil bank were reviewed and approved or revised, of which 610 letters and memoranda deal with the acreage reserve and 313 letters and memoranda deal with the conservation reserve. Daily oral and informal written advice was given administrative officials.

There was inserted on page 2088 a table showing the number of violation cases which have arisen under the soil bank and the amounts involved. We do

not have a separate record showing the number of these cases in which this office participated or rendered legal advice. It can be stated, however, that legal advice and assistance were required in a number of these cases.

Of the written opinions and memoranda prepared by this office, 371 have dealt with violations, questions of eligibility and other irregularities under the program, of which 249 concern the acreage reserve and 122 pertain to the conservation reserve.

This office reviews and checks conservation reserve contracts in cases referred to us in which it is indicated that actions may have been taken to exceed limitations in the act or administrative regulations, or where there may have been misrepresentations in establishing eligibility, or fixing rates or other contract terms. The cases reviewed are generally those cases which are referred to this office as the result of audits and investigations or other administrative review. Audits and investigations are carried out by the Internal Audit Division and the Compliance and Investigation Division of the Commodity Stabilization Service. No investigative function is performed by this office to uncover cases of possible violations.

Opinions have been prepared and letters and memoranda reviewed with regard to 91 cases involving the specific question of the application of the $3,000 payment limitation in the acreage reserve and the $5,000 payment limitation in the conservation reserve, of which 30 cases concern the acreage-reserve limitation and 61 cases concern the conservation reserve limitation.

Attorneys from this office have participated in 56 county and State committee hearings on soil-bank violations, of which 51 were acreage-reserve cases and 5 were conservation reserve cases.

A total of 59 cases have reached litigation of which 54 involve the acreage reserve and 5 involve the conservation reserve. Eighteen acreage reserve cases and two conservation reserve cases have been closed. There are presently pending in the office in Washington and in the field for referral to the Department of Justice, 22 acreage reserve cases and 3 conservation reserve cases.

As indicated above, the larger part of the legal work in connection with the soil-bank program to and including the 1958 program year has been performed in connection with the acreage reserve part of the program. Prior to the 1959 signup, participation in the conservation reserve program had been comparatively small. The 1959 signup was the first year in which participation was large. Moreover, participation in the conservation reserve program is under long-term contracts which result in a cumulative increase in the number of farms placed in the program. The closing of the acreage reserve program with the year 1958 has resulted in the placing of some land previously in that program in the conservation reserve program. Due to the shift in emphasis from the acreage reserve program to the conservation reserve program, it is anticipated that an increase in violations and other irregularities under the program will result in substantial increases in the legal services necessary in connection with the conservation reserve program.

Following is a copy of the opinion rendered by this office in connection with the conservation reserve contracts discussed in the investigation report of the committee staff with reference to the $5,000 payment limitation under the conservation reserve program. As the opinion indicates, it is our conclusion that there was no violation of the payment limitation in the particular cases mentioned, on the basis of the regulations that existed at the time the contracts were entered into. However, there have been other cases which this office has reviewed in which violations of the limitation have been found to exist, and the regulations have since been tightened up so that some of the cases considered in the opinion would be decided differently under the revised regulations.

U.S. DEPARTMENT OF AGRICULTURE,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., January 12, 1959.

(Op. Gen. Coun. No. 71—Walter C. Berger, Administrator, CSS)

SYLLABUS

$5,000 payment limitation under the soil bank conservation reserve program

A review of certain conservation reserve contracts discussed in an investigation report made to the House Committee on Appropriations (see Hearings Before the Subcommittee of the Committee on Appropriations, Department of Agriculture Appropriatons for 1959, Pt. 1, pp. 342–378) indicates no violation of the payment limitation. In reviewing the contracts, the same principles were applied as those which have been followed in determining violations of the payment limitation under the agricultural conservation program.

OPINION FOR WALTER C. BERGER, ADMINISTRATOR, COMMODITY STABILIZATION SERVICE

DEAR MR. BERGER: During the hearings before the House Subcommittee on Department of Agriculture and Related Agencies Appropriations, we were asked to review certain conservation reserve contracts discussed in an investigation report made to the House Committee on Appropriations (see Hearings Before the Subcommittee of the Committee on Appropriations, Department of Agriculture Appropriations for 1959, Pt. 1, pp. 342–378) to determine their validity with reference to the $5,000 payment limitation prescribed in the regulations governing the conservation reserve program. In addition, in our memorandum to you of September 11, 1958, we requested that you refer to us for consideration any other cases in which there is a possibility of a violation of the payment limitation.

Section 485.164 of the regulations provides in general that the total of all annual payments to any producer with respect to all farms in which he has an interest shall not exceed $5,000. As defined in section 485.150(q) of the regulations, "producer" means any person who is an owner or landlord, cash tenant, standing-rent tenant, fixed-rent tenant, share tenant, sharecropper, or, in the case of rice, a person who furnishes water for a share of the crop. "Person" is defined in section 485.150(l) and includes in its definition an individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other legal entity, or a State, political subdivision of a State, or any agency thereof.

Section 485.164 further provides that "all or any part of the annual payment which otherwise would be due any producer may be withheld, or required to be refunded, if he has adopted, or participated in adopting any scheme or device, including the dissolution, reorganization, revival, formation, or use of any corporation, partnership, estate, trust, or by any other means, designed to evade, or which has the effect of evading, the provisions of this section." Section 485.164 also provides that "a family trust created on or after August 16, 1956, will be considered a scheme or device * * * if it results in the settlor and beneficiaries of the trust receiving in the aggregate annual payments under the * * * program for any year of the contract period in excess of $5,000." At the time the contracts in question were approved, the regulations provided that for purposes of this provision, members of the family included husband or wife of the settlor, children of the settlor, their husbands and wives, and members of the immediate household of the settlor.

The $5,000 payment limitation is one that was imposed solely by administrative regulation, and not by statute.

In administratively prescribing the maximum amount of compensation a producer may receive, the Secretary used language which is substantially identical with the language of the payment limitation provided for in the agricultural conservation program. Section 8(e) of the Soil Conservation and Domestic Allotment Act, as amended, prescribes $10,000 as the maximum payment which may be received under that program for any year. In addition, in some years, the Department of Agriculture appropriation acts have further limited the maxi-

mum payment which may be received. The regulations under the agricultural conservation program contain a prohibition similar to that in the conservation reserve program against schemes or devices designed to evade the limitation. We understand that in using language which was the same as that used in the agricultural conservation program, it was also intended that such limitation should be applied in the same manner as the payment limitation had been applied under the agricultural conservation program. Under the agricultural conservation program, certain principles have been followed over the years in determining whether certain persons, or legal entities interested in farming operations as landowners, landlords, tenants, or sharecroppers were to be treated as one producer or as separate producers.

In 1948, for example, this Office stated in an opinion dealing with the limitation of payments under the agricultural conservation program (and the naval stores conservation program) that "the test of evasion of a payment limitation is whether one person (individual, corporation, partnership, or other legal entity) has been enabled to receive for himself, directly or indirectly, an amount in excess of the maximum payment permitted, regardless of any intention to evade."

"This is not to say, however, that a producer may not change his operations without evading the * * * limitation provision. For example, he may decide to reduce the extent of his operations * * * [and] earn a payment under the program not in excess of the maximum, and * * * sell the rest of the holdings formerly operated. This is permissible so long as the * * * sale is bona fide and the new operator does not give back part or all of the payment he earns under the * * * program to the old operator so as to cause the latter to receive more than the * * * maximum payment." Sol. Op. No. 5417 (Sept. 17, 1948).

In instructions to the field, field offices were instructed in connection with the payment limitation under the agricultural conservation program that—

"Any change in the method of operating a farm or performing practices should not be regarded as a device which would have the effect of evading the $500 payment limitation unless, as the result of the change, a person receives or would receive a total payment of more than $500. The change should not be questioned merely because, as a result of the change, more persons would share in the payments for a farm under the 1948 program than would have shared had the operating arrangements in effect during previous programs been continued. ACP Memorandum—61, dated November 26, 1957."

Since the language used in limiting payments under the conservation reserve program, at the time these cases arose, was the same as the language used in limiting payments under the agricultural conservation program, and since it is our understanding that it was intended that the limitation should be applied in the same manner as the limitation under that program, we have applied the test stated above, and the other principles which have been followed in determining violations of the payment limitation under the agricultural conservation program in reviewing the contracts discussed in this opinion.

1. Roberts case

Mr. Albert F. Roberts, of Sabetha, Kans. and Adrian, Tex., owned a 3,392-acre farm located in Deaf Smith County, Tex. Mr. Roberts attempted to place sufficient acreage in the conservation reserve program to enable both him and his wife to obtain the $5,000 maximum payment. The Deaf Smith County Agricultural Stabilization and Conservation Office informed Mr. Roberts that it would only permit him to place enough acreage in the program to obtain one maximum payment of $5,000.

Subsequently, Mr. Roberts conveyed to his wife, Irma Roberts, 640 acres of the farm.

In another deed, Mr. Roberts and his wife conveyed to a third person 640 acres of the farm which in turn was conveyed to Mrs. Roberts by that third person.

In two other conveyances of land, Mr. Roberts and his wife conveyed 640 acres of the farm to their daughter, Alice Roberts Barker, and 640 acres to their daughter-in-law, Harriet Blum Roberts. The daughter resides in Carmel, Calif., and the daughter-in-law in Sabetha, Kans.

On November 5, 1956, Mr. Roberts placed 552.3 acres in the conservation reserve program for 10 years at an annual payment of $4,970.70.

In early January 1957, Mr. Roberts, having been appointed an attorney in fact by his wife, daughter, and daughter-in-law, asked that the conservation reserve contract be revised in order to place in the program the 552.3 acres under

the original contract together with 1,666.5 acres of the land now owned as separate estates by his wife, daughter, and daughter-in-law. Under the revised agreement, the wife, daughter, and daughter-in-law would each receive an annual payment of $4,999.50. The agreement was approved after submission of the case to the Department in Washington.

Each persons owns his tract of land separately. Except for Mrs. Roberts, who lives with Mr. Roberts, each resides in separate households. There is no evidence tending to show that Mr. Roberts is receiving the payments that are being made to the other parties. No one of the producers receives annual payments in excess of $5,000. The payments that have been made have been made separately to each of the four parties. Therefore, the facts do not appear to constitute a scheme or device to evade the $5,000 payment limitation. The fact that Mr. Roberts conveyed part of his property to his wife after being denied permission to place more than enough acreage in the program to obtain one maximum payment of $5,000 was not considered a scheme or device to evade the limitation since the wife was eligible even before the conveyance to receive a separate $5,000 payment in accord with the ruling followed over the years in the agricultural conservation program to the effect that the wife in a community-property State may be treated as a separate producer in applying maximum payment limitations. The wife in a community-property State has also been treated as a separate producer for purposes of voting for community ASC committeemen (Solicitor's Opinion No. 5215, March 1, 1946), and for purposes of voting in marketing quota referendums (7 CFR pt. 717, 23 F.R. 3434). The rule that a wife may be treated as a separate producer from her husband in applying payment limitations has consistently been followed since the beginning of the agricultural conservation program, and is presently carried as part 7, paragraph 238D of ACPS Handbook.

2. Mills case

In the fall of 1956, Mr. Walter B. Mills and his wife, Bonnie, conveyed specific tracts of a farm owned by them and located in Deaf Smith County, Tex., to Bertie O. Bagwell, Donald L. Bagwell, Johnnye Bagwell Doshier, T. L. Leach, James Elliott Weeks, and James Elliott Weeks, Jr., for a reported consideration of $187,950. The tracts of land sold to the six persons are now being operated as one unit by the husband of Johnnye Bagwell Doshier. On November 21, 1956, the six grantees under the deeds of conveyance from Mr. Mills and his wife placed 1,914.6 acres in the conservation reserve program for 10 years under which the annual compensation payable to the six producers totals $17,231.40. Later, on December 20, 1956, these same persons placed an additional number of acres in the program, their agreement now covering 3,181.7 acres with annual payments totaling $28,635.30.

Although all of the purchasers are related to each other by blood or marriage, none of them is related to Mr. Mills. Each person owns his tract of land separately. No one of them is receiving annual payments under the program in excess of $5,000, and there is no evidence that any of them is receiving any part of the payments that are being made to the other parties. Therefore, the facts do not appear to constitute a scheme or device to evade the $5,000 payment limitation.

3. Kromer case

Mr. E. H. Kromer owned a 2,692.6-acre farm located in Deaf Smith County, Tex. On October 24, 1956, Mr. Kromer placed 526.1 acres in the conservation reserve program for 10 years at an annual payment of $4,734.90.

Some time in November 1956, Mr. Kromer and his wife, Nell, conveyed to their son, W. Keith Kromer, 640 acres of the farm for a reported consideration of $28,844.80, secured by a vendor's lien for that amount at 4 percent interest to be paid in 10 equal installments. In addition, the son assumed his proportionate share ($9,555.20) of Mr. Kromer's indebtedness on the farm. In a second deed, Mr. Kromer and his wife conveyed to their son-in-law, Bedford Harrison, Jr., 640 acres of the farm under the same terms.

Also, by a third deed, Mr. Kromer and his wife conveyed 640 acres to Thomas W. and Charlotte Risley for $22,444.80 and their proportionate share of Mr. Kromer's indebtedness of $40,000 on the farm. The Risleys are not participating in the conservation reserve program.

On December 28, 1956, Mr. Kromer, his son, and his son-in-law entered into a revised contract under which Mr. Kromer placed the same acreage in the

program as he had under the original contract. In addition, W. Keith Kromer placed 325.8 acres in the program for 10 years at an annual payment of $2,932.20, while Bedford Harrison, Jr., placed 329.4 acres in the program for 5 years at an annual payment of $2,964.60.

Since no one of the producers is receiving more than $5,000 and there is no evidence indicating that either of the three parties to the contract is receiving any part of the payments that are being made to the others, it does not appear that the facts constitute a scheme or device to evade the $5,000 payment limitation.

4. Boyd case

Mr. Tom J. Boyd in 1956 owned an 8,797.4-acre farm located in Deaf Smith County, Tex., and with his three sons—Richard B., Thomas B., and William D.—who were operating the farm, entered into a conservation reserve contract on November 23, 1956, placing 1,523.1 acres in the program for 10 years under which the annual payments to the producers totaled $13,707.90. Because of certain conveyances made by Mr. Tom J. Boyd and his wife, Cleo, the Boyd farm has now been reconstituted and the conservation reserve contract revised. The contract now covers 1,257.7 acres with annual payments to the Boyds totaling $11,319.30, but with no one of them receiving annual payments in excess of $5,000.

Mr. Boyd and his wife conveyed 640 acres of their farm to O. J. Cotton for a reported consideration of $33,600. Mr. Cotton, on June 4, 1957, placed 555.8 acres in the program for 10 years at an annual payment of $5,000.

Mr. Boyd and his wife also conveyed 640 acres which is being held in trust by R. H. Cotton for the benefit of the five grandchildren of T. Carr Forrest, Jr., and his wife, Ruth

On June 4, 1957, R. H. Cotton placed 555.5 acres of the land in the program for 10 years at an annual payment of $4,999.50.

Mr. Boyd and his wife also conveyed another 640 acres which is being held by R. H. Cotton as trustee for the benefit of the four children of James A. Cotton. (The Boyds received a reported consideration of $76,800 for the 1,280 acres being held in trust by R. H. Cotton.)

On June 4, 1957, R. H. Cotton placed 555.5 acres of the land he holds in trust for the Cotton children in the program for 10 years at an annual payment of $4,999.50.

Mr. Boyd and his wife also conveyed 1,600 acres to W. P. Barnes for a reported consideration of $96,000. Mr. Barnes and his wife then conveyed 555 acres of this land in trust to R. H. Cotton for the benefit of their daughter, Naida L. Barnes. Under the terms of the trust, the trustee is required to pay Mr. Barnes $23,000 with interest in 10 equal installments and $9,000 at 4 percent interest on or before 10 years from the date of the creation of the trust. Likewise, Mr. Barnes and his wife conveyed 555 acres of the land in trust for the benefit of their son, John L. Barnes, under the same terms. They also conveyed 490 acres of the land in trust for the benefit of their daughter, Jeanette B. Tower, under similar terms. R. H. Cotton was named as trustee in each case. However, R. H. Cotton has now conveyed the land he held for Jeanette Tower to her as her separate estate.

On June 4, 1957, R. H. Cotton, acting as trustee for Naida L. Barnes and John L. Barnes and as an attorney-in-fact for Jeanette B. Tower, placed 1,101.2 acres of land in the program for 10 years at an annual payment totaling $9,910.80. Mrs. Tower receives one-half of the compensation with the two trusts dividing the remainder.

No one of the producers connected with the land formerly owned or now owned by the Boyds is receiving annual payments in excess of $5,000. As pointed out earlier, section 485.164 of the regulations contains specific provisions dealing with family trusts which prohibit the settlor and beneficiaries of such a trust from receiving more than $5,000 in the aggregate. It was known at the time the limitation on family trusts was adopted that some family trusts had been set up and that the trustees had applied for conservation reserve contracts. Approval of such applications was held up until the regulations were amended to deal specifically with family trusts. The provisions adopted with respect to family trusts state that a family trust created on or after August 16, 1956 (the date on which the regulations governing the conservation reserve program were first issued) will be considered a scheme or device to evade the limitation if it results in the settlor and beneficiaries of the trust receiving more than $5,000 in the aggregate. A family trust was defined as including husband or wife of the

settlor, children of the settlor, their husbands and wives, and members of the immediate household. By the same token, trusts which did not fall within this definition would not constitute a scheme or device solely because they resulted in the settlor and beneficiaries receiving more than one $5,000 annual payment.

It does not appear from the facts as recited in the foregoing cases that there is any case in which the settlor and beneficiaries of the trust are receiving more than $5,000 in the aggregate. Accordingly, the facts do not appear to constitute a scheme or device to evade the limitation.

5. Turner case

By two deeds, one B. Sherrod conveyed 3,520 acres of farmland located in Deaf Smith County, Tex., to Hubert L. Turner in the fall of 1956 for a reported consideration of $156,590. Mr. Turner is not participating in the conservation reserve program.

Mr. Turner and his wife conveyed 556 acres of the land to their son-in-law W. C. Johnson for a reported consideration of $33,360.

In another deed, Mr. Turner and his wife conveyed another 556 acres to their son-in-law, Billy Doyle Walls, under similar terms.

Also, Mr. Turner and his wife conveyed to John T. Boyd in separate trusts for—

(1) their son Beverly Joe, 556 acres, for a reported consideration of $33,360;

(2) their grandson, Doyle Wesley Walls, 572 acres, for a reported consideration of $34,320;

(3) their granddaughter, Deborah J. Johnson, 556 acres, for a reported consideration of $33,360; and

(4) their granddaughter, Amelia Ann Johnson, 168 acres, for a reported consideration of $10,080.

Boyd, as trustee under the separate trusts, and Billy Doyle Walls and W. C. Johnson on June 5, 1957, placed 2,777.5 acres of land in the program for 10 years with annual payments as follows:

W. C. Johnson	$4,999.50
Billy Doyle Walls	4,999.50
Deborah J. Johnson and Amelia Ann Johnson trusts	4,999.50
Doyle Wesley Walls trust	4,999.50
Beverly Joe Turner trust	4,999.50

Neither Mr. Walls nor Mr. Johnson is receiving annual payments in excess of $5,000. Mr. Turner and his wife, the settlors of the several trusts, are not participating in the program. Since Beverly Joe, their son, is the only member of the family covered by the limitation on family trusts at the time their contract was entered into, the aggregate amount received by the settlor and the beneficiary was the $4,999.50 received by the beneficiary. The other trusts were established in favor of grandchildren of the settlor and were not covered by the regulations as they existed at the time the contracts were entered into. Therefore, the facts do not appear to constitute a scheme or device to evade the $5,000 payment limitation.

6. Guseman case

In 1956, Mr. C. T. Guseman operated a 22,247-acre farm located in Deaf Smith County, Tex. His wife Genevieve held title to part of the land as her separate estate.

Sometime in the fall of 1956, Mr. Guseman conveyed 640 acres of the land to his daughter Cecilia J. Timberlake for a reported consideration of $22,400.

In another deed, Mr. Guseman conveyed 1,280 acres of the farm to his wife Genevieve for a reported consideration of $38,400.

Also, Mr. Guseman conveyed 320 acres to Mrs. G. B. Pinkerton for a reported consideration of $16,800.

In November 1956, Mr. Guseman, his wife, his daughter, and Mrs. Pinkerton placed 1,892.3 acres in the program with annual payments to the four producers totaling $16,700.50 (with the contract period being 5 years except for 312.2 acres placed in the program for 10 years).

Mr. Guseman and his wife also conveyed 640 acres of the farm to W. B. Renfro for a reported consideration of $32,000. Mr. Renfro at a later date conveyed 320 acres of this land to his niece Elizabeth Cesar and 320 acres to her husband Fain G. Cesar, receiving a reported consideration of $32,000.

The Cesars have placed 604 acres of their land in the program for 10 years. Elizabeth Cesar receives an annual payment of $2,880, and Fain Cesar receives an annual payment of $2,556.

Mr. Guseman conveyed 1,280 acres of the farm to W. W. Shields for a reported consideration of $68,800. Mr. Shields in turn, for a reported consideration of $52,800, conveyed to W. R. Potter in trust for (1) his son John Thomas Shields, 640 acres, and (2) his daughter Nancy K. Hardin, 640 acres.

The land conveyed in trust for the benefit of Nancy K. Hardin was subsequently conveyed to her by the trustee. (Mr. Shields is not participating in the program.)

On January 7, 1957, Mrs. Hardin and W. R. Potter, as trustee for John Thomas Shields, placed 1,111.0 acres of land in the program for 10 years. Mrs. Hardin receives $4,999.50 annually, and the trustee receives an equal amount.

No one of the producers connected with the land formerly owned or now owned by the Gusemans is receiving annual payments in excess of $5,000. There is no evidence that any of them is receiving any part of the payments that are being made to the other parties. Therefore, the facts do not appear to constitute a scheme or device to evade the $5,000 payment limitation.

7. Wicks case

In 1956, Mr. Gordon Wicks and his former wife Mavis Wicks Snow were the owners of a 13,522-acre farm located in Curry County, N. Mex., the farm being operated under the name of Wicks & Sons. On October 8, 1956, Wicks & Sons placed 556.2 acres in the conservation reserve program for 10 years at an annual payment of $5,000. (The Wicks farm has since been reconstituted and Wicks & Sons now have 601.2 acres in the program at an annual payment of $5,000.)

In April 1957, Mr. Wicks and his former wife entered into contracts with 12 persons for the sale of a certain amount of the land they own, deeds to be given after payment had been made according to the terms of the contracts. (For this land Wicks and his former wife will receive a reported consideration of $400,710.)

Charles E. Green, of Clovis, N. Mex., purchased 660 acres of the Wicks farm and has placed 535.7 acres in the program for 10 years at an annual payment of $4,821.30.

Joe B. Sisler, of Clovis, likewise purchased 660 acres and has placed 556 acres in the program for 10 years at an annual payment of $5,000.

B. V. Martin, of Clovis, purchased 480 acres and has placed 384 acres in the program for 10 years at an annual payment of $3,456.

Lynn L. Martin, of Clovis, purchased 270 acres and has placed 232 acres in the program for 10 years at an annual payment of $2,088.

Gene Pettigrew, of Clovis, purchased a certain number of acres of the Wicks farm. He owned or operated other land prior to this purchase and now operates an 800-acre farm. He has placed 549.3 acres in the program for 10 years at an annual payment of $4,943.70. He shares this compensation with Bertha Settlemire.

Andrew D. McCasland, of Clovis, purchased 810 acres and has placed 556 acres in the program for 10 years at an annual payment of $5,000.

Billy M. McCasland, of Clovis, purchased 795 acres and has placed 556 acres in the program for 10 years at an annual payment of $5,000.

Paul F. Reed, of Clovis, purchased 640 acres and has placed 535.6 acres in the program for 10 years at an annual payment of $4,820.40.

Gerald D. Hastin, of Clovis, purchased 320 acres and has placed 275.2 acres in the program for 10 years at an annual payment of $2,476.80.

F. D. Stout, of Broadview, N. Mex., purchased 490 acres and has placed 325.3 acres in the program for 10 years at an annual payment of $2,927.70.

Wayne Stout, of Broadview, purchased 480 acres and has placed 264.6 acres in the program for 10 years at an annual payment of $2,381.40.

Victor Stout, of Portales, N. Mex., purchased 490 acres and has placed 420.9 acres in the program for 10 years at an annual payment of $3,788.10.

Each person buying land from Mr. Wicks and his former wife is individually responsible for making his annual installment payment. Although by the terms of the purchase agreement each person agreed to place a certain number of acres in the conservation reserve program and assign a portion of the compensation therefor sufficient to cover the annual installment payment due, the purchase contract will not necessarily be terminated if the conservation reserve contract should be canceled. The vendee retains the option of continuing to make installment payments and, upon completing payment of the purchase price, will receive a warranty deed.

The deeds to the separate tracts of land were delivered "in escrow" and are being held by the First Federal Savings & Loan Co. at Clovis, N. Mex. The sales contracts therselves are recorded in the Curry County clerk's office. No one of the purchasers is receiving annual payments under the conservation reserve program in excess of $5,000, and there is no evidence that any of them is receiving any part of the payments that are being made to the other parties. Therefore, the facts do not appear to constitute a scheme or device to evade the $5,000 payment limitation.

8. Gano properties case

In 1956, Harold N. Hobart, Sr., Harold N. Hobart, Jr., and Gano Hobart Tschudy owned a considerable amount of land in Kiowa County, Colo., their farm being operated under the name of Gano Properties.

Sometime in April 1957, the Hobarts and Tschudy entered into a sales contract with George Fuller of Arlington, Colo. Mr. Fuller purchased 640 acres and has placed 407 acres of the land in the conservation reserve program at an annual compensation of $2,849.

Other persons—including Harry Griswould of Arlington, Colo.; Preston D. Brewer, of Booker, Tex.; O. G. Henderson of Beaver, Okla.; Z. J. Harmon, of Fowler, Kans.; and Thomas W. Johnson, of Portales, N. Mex.—have purchased Gano properties land in Kiowa County and have placed portions of it in the program.

The Hobarts and Mrs. Tschudy also owned as tenants in common a 30,000-acre farm in Crowley County, Colo. This property was purchased at an executor's sale by Harold N. Hobart, Sr., on December 30, 1953. On January 7, 1954, Harold N. Hobart, Sr., and his wife, conveyed an undivided two-fifths' interest each in this property to Harold N. Hobart, Jr., and Gano Hobart Tschudy, and retained an undivided one-fifth interest.

The Hobarts and Mrs. Tschudy have entered into sales contracts for some of this farm with nine individuals—Frank Gregory, of Ordway, Colo.; John Bauer, of Sugar City, Colo.; Reuben Bauer, of Sugar City; Benjamin Bauer, of Sugar City; Earl Proctor of Sugar City; Joe Bauer, of Sugar City; Nathan Schlegel, of Rocky Ford, Colo.; Solomon J. Schlegel, of Rocky Ford; and Gilbert Proctor, of Springfield, Colo.—who have placed portions of the land they purchased in the program.

No one of the purchasers is receiving annual payments under the program in excess of $5,000, and there is no evidence that any of them is receiving any part of the payments that are being made to the other parties. Therefore, the facts do not appear to constitute a scheme or device to evade the $5,000 payment limitation.

Sometime in April 1957, Mr. Hobart, his son, and Mrs. Tschudy also agreed to a voluntary partition of a certain portion of the land which since 1954 they, as tenants in common, owned in Crowley County, with each one now holding title to a separate farm. Each one has placed a certain number of acres in the conservation reserve program. (They also placed under contract a 390-acre tract which they still hold as tenants in common.) Each person receives the maximum annual payment of $5,000. The contracts were not approved initially by the Crowley County ASC Committee upon the ground that the Gano Properties were entitled to only one $5,000 maximum annual payment. However, upon submission of the matter to the Department at Washington, it was concluded that the parties were eligible to participate separately. The fact that the parties partitioned the land was not considered a scheme or device to evade the limitation since, prior to the partition, as tenants in common, the Hobarts and Mrs. Tschudy were separate producers for purposes of applying the payment limitation, and the partition of the land did not affect their status within the meaning of the conservation reserve program regulations. The ruling that each of the tenants in common would be treated as a separate person in applying the limitation followed the ruling which has been followed since 1940 in applying the limitation in ACP payments. Thus, in Solicitor's Opinion 2109, Feb. 3, 1940, this office stated:

"It is the opinion of this office that the $10,000 limitation on payments is not applicable to the aggregate payment due the joint owners of these farms. Where title to property is held by persons as tenants in common, it is our opinion that each of such persons is entitled to earn a payment up to, but not in excess of, $10,000. The limitation provided in section 8(e) is on the amount of payment to a person and not on the amount of payment computed for a farm. A tenant in common, though owner of an undivided share in property, holds by a several

and distinct title, and, except for the fact that he has not the exclusive possession, he has the same rights with respect to his share as a tenant in severality (Tiffany, The Law of Real Property, 3d ed., section 426). Accordingly, for the purpose of applying the limitation, it appears that each tenant in common should be treated as a distinct person."

SUMMARY AND CONCLUSION

As indicated in the foregoing discussion, we do not believe that any of the several cases considered in this opinion constitutes a violation of the payment limitation. The facts do not indicate that any of the producers involved in the cases considered in this opinion is receiving annual payments in excess of $5,000. There is no evidence tending to show that any of the sales were not valid or that any producer who is participating in the program and who has conveyed property to other producers is receiving any part of the payments being made to his transferees who have placed land in the program. On the basis of the evidence available, therefore, it appears that at the time the several contracts were executed, they satisfied all of the requirements of the then existing regulations. Of course, if any evidence should come to light tending to show that any of the transfers were not valid or that any part of the annual payment is being paid over to the transferor, the matter should be brought to our attention for further consideration.

A ruling in a case that four people can participate instead of one does not mean, of course, that the Government will be paying four times $5,000 or $20,000 for the performance it could get from one producer for only $5,000. Rather it means that each of the four persons is eligible to participate in the program to the extent of $5,000, i.e., that each of the persons can place an amount of land in the program sufficient to earn a payment of $5,000. In other words, the Government does not pay out an amount in excess of the participation which it receives.

As we have said, at the time the several contracts discussed were executed, it is our opinion that they satisfied all of the requirements of the then existing regulations. However, as you know, the regulations governing the application of the payment limitation have since been extensively revised. New rules have been issued to be followed by State and county committees in determining whether certain individuals interested in farming operations as landowners, landlords, tenants or sharecroppers are to be treated as one producer or separate producers. For example, husband and wife are now treated as one producer for purposes of applying the limitation. Individuals on the same farm having any family relationship are treated as one producer unless such individuals operated as separate producers during the year before the contract is entered into. Tenants in common are treated as one producer. In addition, the limitations on family trusts have been extended to cover grandchildren of the settlor, stepchildren of a child of the settlor, and any other minor related to the settlor by blood or marriage. Further, the regulations have been amended to provide that farms under new ownership shall not be eligible to be placed in the conservation reserve during the first 12 months of the new ownership unless the county committee determines that the farm would continue to be farmed by the new owner in the absence of the soil bank program. Of necessity, therefore, our opinion as to the application of the payment limitation to facts similar to those contained in some of the cases discussed above would be different under the revised regulations.

Sincerely yours,

R. L. FARRINGTON, *General Counsel.*

Mr. WHITTEN. Also, I would like to have a report as to what action was taken by the Solicitor's Office in connection with the cases called to your attention in our investigating reports which appeared in the hearings last year and the year before.

Mr. FARRINGTON. We made a special report on that, Mr. Chairman, which we will submit.

Mr. WHITTEN. Yes.

Mr. FARRINGTON. Mr. Chairman, off the record a minute.

(Discussion off the record.)

Mr. FARRINGTON. Mr. Chairman, I have a schedule showing the total number of violation cases which were reported under the acreage

reserve and conservation reserve programs, the total amount of payments forfeited, total amount of refunds requested, the total amount of refunds collected, and other information in connection with violations under those two programs which I would like to put in the record.

Mr. WHITTEN. We will be glad to have it in the record at this point, together with such other information as you might have as to participation, and so forth.

(The information referred to follows:)

Acreage reserve

Total number of violation cases reported	6,992
Total amount of payment forfeited	$1,484,113.39
Total amount of refunds requested	$314,898.24
Total amount of refunds collected	$186,390.06
Total number of cases of civil penalty assessed	1,519
Total amount of civil penalty assessed	$465,089.51
Total amount of civil penalty collected	$338,356.33

Conservation reserve

Total number of violation cases reported	794
Total amount involved, including civil penalty	$318,127.68
Total amount collected, including civil penalties	$176,033.18
Civil penalties collected	$54,796.54

Mr. WHITTEN. Now, I pointed out when the Secretary was here that the Comptroller General reported that a mistake of $800,000 was made by the Texas State Committee in connection with the lands in Texas under the conservation reserve.

Are you familiar with that and could you advise us what action you have taken or plan to take to correct that contract?

Mr. FARRINGTON. I am not familiar with it at all.

COMPTROLLER GENERAL'S REPORT ON PAYMENT RATES IN TEXAS

Mr. WHITTEN. The Comptroller General reported to the Department that an error was apparently made by the Texas State Committee, and that it would cost the Government about $800,000.

If that hasn't come to your attention, I would be glad to have you check it and see what action you have taken and what action you contemplate.

Mr. FARRINGTON. We will be pleased to do that, Mr. Chairman. I was not informed on that.

(The information is as follows:)

STATEMENT OF THE GENERAL COUNSEL

The situation with regard to the mistake in calculation is described in the report of the audit of the soil bank program by the Comptroller General as follows:

"In computing the annual payment rates, the Soil Bank Division made a miscalculation which resulted in assigning State annual payment rates of $10 an acre to Texas and $8 an acre to New Mexico. Had the miscalculation not been made, both States would have been assigned the rate of $9 an acre consistent with the procedure of rounding the rate to the nearest dollar. On the basis of the percentage difference between the $9 rate and the rates assigned, and the higher participation in Texas, we calculated that up to about $800,000 might have been paid in rental payments during 1957 in excess of what would have

been paid had the miscalculation not been made. The Acting Administrator, CSS, in a letter dated August 1, 1958, informed us that all conservation reserve rates are being redetermined for 1959 and, therefore, new contracts signed in 1959 and thereafter will not be affected by this miscalculation. However, the monetary effects of this miscalculation will continue in varying degrees, dependent on the relative participation of these two States, throughout the terms of the contracts entered into prior to 1959.

"These rates have been administratively confirmed by the Secretary of Agriculture and promulgated in the Federal Register (21 F.R. 6289, Aug. 22, 1956). Payments made under contracts with the individual producers in accordance with these rates, and otherwise proper, cannot be questioned by the General Accounting Office in view of the discretionary authority of the Secretary in section 107(b)(2) of the Soil Bank Act to establish the rates and the provisions in section 121 of that act that the facts constituting the basis for any payment or compensation, or the amount thereof, under applicable conditions, shall be final and conclusive and not reviewable by any other officer or agency of the Government.

"The only statutory requirement with respect to conservation reserve rates is contained in section 107 of the Soil Bank Act and is in general terms: 'The rate or rates of the annual payment to be provided for in the contracts shall be established on such basis as the Secretary determines will provide producers with a fair and reasonable annual return on the land established in protective vegetative cover or water storage facilities, or other soil-, water-, wildlife-, or forest-conserving uses, taking into consideration the value of the land for the production of commodities customarily grown on such kind of land in the county or area, the prevailing rates for cash rentals for similar land in the county or area, the incentive necessary to obtain contracts covering sufficient acreage for the substantial accomplishment of the purposes of the conservation reserve program, and such other factors as he deems appropriate. Such rate or rates may be determined on an individual farm basis, a county or area basis, or such other basis as the Secretary determines will facilitate the practical administration of the program.'

"The payment with respect to an individual farm was determined as follows: A rate calculated by the Soil Bank Division for each State was promulgated in the regulations issued by the Secretary. Section 485.163, 21 Federal Register 6289. The State committee, in turn, established county rates (taking into account certain criteria specified in the regulations) which when weighted by the acreage of cropland for the respective counties equalled the State rate. The county rate became the farm payment rate for the farm unless the county committee determined that the land on the farm had a lower productivity, cash value, or rental rate than the average of the land in the county.

"The error in calculation occurred in arriving at the State rates. A national rate of $10 an acre was used in arriving at the State rates. The rates assigned to the individual States ranged from $7 to $13 an acre. The State rates were determined as follows:

"1. A constant base rate of $5 an acre was set administratively for each State.

"2. To the constant base rate for each State was added a variable amount computed to limit the average of the variable amounts to the additional $5 remaining in the predetermined $10 national average rate. The variable amount assigned was based on each State's comparative position within a composite index computed on the basis of the factors of productivity and dryland value. The productivity factor, which was given a weight of 3 in the index, was calculated on the 1944 to 1953 average production (converted into corn feed equivalent) of non-irrigated acres of oats, barley, sorghum grains, cowpeas, velvet beans, and six types of hay. Dryland values, which were given a weight of 1 in the index, were based on 1954 farm values obtained from the Bureau of the Census but were limited to a maximum of $200 an acre for purposes of this calculation.

"The State rates so established, but not the method of arriving at such rates, were promulgated by the Secretary of Agriculture as part of the regulations (sec. 485.163, 21 F.R. 6289).

"Neither the specific national annual rate of $10 an acre nor the particular basis used for determining State rates was required to be used by the statute or the regulations. Both were merely internal guides used in arriving at State rates which would produce farm rates felt to be fair and reasonable. The only effective legal rates were those which were promulgated by the Secretary and made a part of the regulations. Since the contracts were made in accordance with the official rates approved by the Secretary and published as a part of the regulations, no basis exists for reducing the rates specified in the contracts. As

indicated by the Comptroller General, payments made under these contracts with the individual producers in accordance with these rates and otherwise proper, cannot be questioned. Regulations validly prescribed by a Government administrator are binding upon him as well as the citizen. *Accardi* v. *Shaughnessy*, 347 U.S. 260; *Service* v. *Dulles*, 354 U.S. 363. See also, *Sheridan-Wyoming Coal Co.* v. *Krug*, 172 F. 2d 282.

Mr. WHITTEN. Mr. Marshall.

ST. PAUL RATE PROCEEDING

Mr. MARSHALL. Mr. Farrington, I notice that in your statement you say:

I should mention also an important rate proceeding under the Packers and Stockyards Act initiated during the fiscal year 1958 in connection with the operations of the yards in St. Paul. This proceeding involves a complete change in the prevailing theory of ratemaking for stockyards.

Can you tell me very briefly what is involved?

Mr. Farrington.

Mr. FARRINGTON. Yes, sir. That stockyard was built some time ago, and it is my understanding that they have asked for a rate based on the cost of reproduction of the yard, not the original cost of the yard plus additions, but what the rate would be if they had to build this whole yard now at present prices.

Mr. MARSHALL. Which would have a tendency to increase the percent of cost that would be charged back to the farmer for use of the yard.

Mr. FARRINGTON. That is correct, sir.

Mr. MARSHALL. Have you progressed far enough so that you could give some indication as to how much the increase of rate to shippers would be?

Mr. FARRINGTON. Let me ask Mr. Bucy to go into that.

Mr. BUCY. We are not in a position, of course, to state that at this time because the proceeding is still pending. It would result, if the application were granted, in a substantial increase in the rate base and then of course the yard is entitled to a reasonable return on that rate base. The Department is opposing the contention of the stockyard owners. We do not feel that they are entitled to the increase in rates which would result from their proposal.

The hearing has been completed, the briefs are being prepared at the present time, and then it will go before the examiner who will file a report, recommending what rates he thinks are supported by the record and then the judicial officer will determine that. So we are not in a position to say just how much is involved because it is susceptible to adjudication at this time.

Mr. MARSHALL. Would you be able to give any indication as to the approximate time that this proceeding will be closed?

Mr. BUCY. I would say that they would be at least another 3 to 4 months anyway, because the parties still have several months for briefing and then that whole record has to be analyzed and the recommended decision made. This may well take a couple of months and then exceptions can be filed to that. There will probably be a 30-day time for exceptions and after they are filed the parties may request an oral argument before the judicial officer. I guess probably 6 months is nearer to it than 3 months before a final decision.

Mr. MARSHALL. Thank you.

Mr. WHITTEN. Mr. Horan.

ATTACHMENT 10

DEPARTMENT OF AGRICULTURE APPROPRIATIONS FOR 1959

HEARINGS

BEFORE THE

SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH CONGRESS

SECOND SESSION

SUBCOMMITTEE ON DEPARTMENT OF AGRICULTURE AND RELATED AGENCIES APPROPRIATIONS

JAMIE L. WHITTEN, Mississippi, *Chairman*

FRED MARSHALL, Minnesota
WILLIAM H. NATCHER, Kentucky
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H. CARL ANDERSEN, Minnesota
WALT HORAN, Washington
CHARLES W. VURSELL, Illinois

ROSS P. POPE, *Staff Assistant to the Subcommittee*

PART 1

THE BUDGET FOR THE DEPARTMENT OF AGRICULTURE
GENERAL AGRICULTURAL OUTLOOK
GENERAL ECONOMIC OUTLOOK
REPORT ON LATIN AMERICAN TRIP
SPECIAL STUDIES ON SUBSIDIES
INVESTIGATION REPORTS:
- INCREASED USE OF AGRICULTURAL PRODUCTS
- OFFICE OF INFORMATION
- ADMINISTRATION OF MILK MARKETING AGREEMENTS
- SOIL BANK PROGRAMS, 1957 (PARTS I AND II)
- WATERSHED PROTECTION AND FLOOD PREVENTION PROGRAM

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Part II—Conservation Reserve Program

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I. Conservation Reserve Program

A. Introduction

Objective of conservation reserve program (CRP) is to place general cropland to conservation use. Rates for 1956 and 1957 were identical, ranging from $6 to $14 an acre with a national average of $10. Contracts run 3, 5, 10, or 15 years, depending upon conservation practice. Soil Bank Act authorized $450 million for each of years 1956 and 1957. Authorization reduced to $325 million for 1958 by 85th Congress.

B. Participation under 1956 program

In 1956, producers placed 1.4 million acres in CRP for which they were paid annual payments of $12.4 million. Department also obligated to pay practice payments of $11.1 million when practices performed; therefore, total amount paid and obligated under 1956 program was $23.5 million, or 5.2 percent of appropriated funds. Producers in Texas paid 46 percent of total annual payments.

C. Participation under 1957 program

Preliminary cumulative figures show 6.5 million acres placed in program during 1956 and 1957, of which 5.1 million acres were in 1957. Goal was 20 million acres. Cumulative annual payments obligated for 1957 total $58 million. Practice payments obligated for 1957 and subsequent years total $60.6 million, of which it is estimated $45 million will be earned during 1957. Therefore, obligated annual payments and estimated earned practice payments during 1957 total $103.1 million, or less than 25 percent of appropriated funds.

Principal reasons for nonparticipation in program are—

1. High land value in relation to CRP payment rate.
2. Farmers' reluctance to sign long-term contracts.
3. Necessity of complying with all allotments and soil-bank-base acreage.

Largest participation was in Texas, New Mexico, Minnesota, North Dakota, Colorado, and South Dakota. Acreagewise, Texas accounted for 24.9 percent, and the 6 States, 64.7 percent.

Survey shows that heaviest participation in Texas, New Mexico, and Colorado was in the drought areas. In 1956, Federal Crop Insurance Corporation (FCIC) canceled crop insurance in 14 counties of these 3 States because it had suffered loss of $18.2 million since 1948. Producers in these counties placed 646,903 acres in CRP, or 9.9 percent of national total.

II. Findings by States

Staff reviewed CRP by State and county level in Texas, New Mexico, Colorado, South Dakota, Mississippi, and Arkansas.

A. Texas

Preliminary cumulative figures show participation for 1956 and 1957 amounted to 1.6 million acres. In 1957 annual payments will total $15.5 million and earned practice payments approximately $10.3 million.

Participation in 11 panhandle counties accounted for 22.1 percent of acreage. Deaf Smith County, which has suffered severe drought for 7 years, was largest participant acreagewise. This county presented problems in interpreting $5,000 maximum payment limitation because of division of title and establishment of trusts after enactment of Soil Bank Act.

Three cases set forth showing how division of title affects $5,000 limitation.

Case No. 1 shows how original owner, wife, daughter, and daughter-in-law, after division of title, are receiving annual payments of $19,896.20 for 10 years, or a total of $199,692. Maximum payment to owner alone over 10-year period would have been $50,000.

Case No. 2 shows how sale of land enabled 6 participants to receive annual payments of $28,635.80 for 10 years, with which payments they will pay for land within 6¾ years. Had original owner retained land he could have received only the maximum $5,000 annual payment, assuming land was community property of owner and wife.

Case No. 3 shows how sale of land to relatives enabled 3 participants to increase annual payments from $4,734.90 to $10,631.70.

Three cases are set forth which show how division of title and establishment of trusts affected $5,000 limitation and enabled purchasers to pay for land through CRP payments.

Case No. 1 shows how annual CRP payments increased from $13,707.90 to $36,229.10, which will enable purchasers to pay for land within 10-year period of contract.

Case No. 2 shows how sale of land to relatives and establishment of trusts for relatives increased annual payments from $5,000 to $24,997.50 for 10-year period. Payments will enable purchasers to pay for land within about 7 years.

Case No. 3 shows how annual CRP payments increased from $10,000 to $32,135.50.

B. NEW MEXICO

Preliminary cumulative figures show participation for 1956 and 1957 amounted to 660,263 acres. In 1957 producers will receive annual payments of $5.3 million and will earn an estimated $1.7 million as practice payments. New Mexico only State to exceed acreage goal and it did so by almost 400 percent.

Participation in 7 counties accounted for 76.4 percent of State's total participation. Based on Bureau of Census values, land in 7 counties could be paid for at CRP rate within 1.6 to 6.4 years. Largest participation acreagewise in Curry County (191,821 acres), 35 percent of county's total cropland, caused by long and severe drought. FCIC canceled crop-insurance program for county in 1956 because it had lost $3.5 million insuring crops since 1948.

Files of Curry County Agricultural Stabilization and Conservation (ASC) Office show that on April 11, 1957, a landowner sold 6,260 acres of his farm to 12 individuals, unrelated to him, for $400,710, which was approximtely $65 an acre. No downpayment or interest was required, but contracts for deed with all 12 individuals provided:

1. All liability was conditioned and contingent upon buyer entering into 10-year CRP agreement at $9 an acre for not less than 70 percent of cultivated portion of land.
2. If CRP contract was canceled before expiration of 10 years, buyer was relieved of all obligations.
3. CRP payments sufficient to meet annual payments must be assigned to seller.

On April 12, 1957, 12 buyers placed a total of 4,881.3 acres in CRP for 10 years for which they will receive annual payments totaling $43,919.70. Prior to sale, landowner executed CRP contract for $5,000 maximum payment; therefore, through sales, CRP payments over 10-year period have been increased from $50,000 to $439,197. Staff questions whether this sale could have been made had it not been for the CRP.

C. COLORADO

Preliminary cumulative figures show participation for 1956 and 1957 amounted to 479,929 acres. In 1957 producers will receive annual payments of $3.4 million and will earn an estimated $1.6 million as practice payments.

Participation concentrated in east-central and southeastern part of State which has suffered prolonged drought. Seven counties in this area placed 220,806 acres in CRP, or 46 percent of State's total. FCIC canceled crop insurance for 3 of these counties in 1956. Of the 7 counties, Kiowa (70,742 acres) and Cheyenne (47,872 acres) ranked first and second in the State. ASC officials of both counties attributed heavy participation to severe drought.

Gano Properties, large landowner, sold land in Kiowa County, apparently because of $5,000 limitation. Land sold at $35 an acre under contract which required no downpayment, but required purchaser to place maximum acreage in

both ARP and CRP and assignment of 75 percent of such payments to Gano. Kiowa County ASC officials said land sold by Gano was worth $12 to $15 an acre prior to soil bank. Six purchasers executed 10 CRP contracts in April 1957, placing 2,788 acres of land purchased from Gano in CRP for 10 years at $7 an acre. Annual payments totaling $19,516 will finance purchase of land.

Gano also sold land in Crowley County during 1957 at reported price of $35 an acre. Nine purchasers of Gano land placed 4,614 acres in CRP for 10 years at $7.50 an acre. Total annual payments will amount to $34,597.50. Land reported to be worth $10 an acre. Prior to above sales, Crowley County ASC office suggested that Gano be permitted to place entire eligible acreage of 11,620 acres in CRP at maximum rate of $2 an acre. Department, however, made no exception to $5,000 limitation.

D. SOUTH DAKOTA

Preliminary cumulative figures show participation for 1956 and 1957 amounted to 412,354 acres. In 1957 producers will receive annual payments of $3.5 million and will earn an estimated $3.2 million as practice payments. State and county ASC officials advised participation generally concentrated in drought areas.

CRP rates range from $6 to $12 an acre. Real-estate broker said $6 rate encourages participation by farmer with marginal land, whereas $12 rate discourages participation by farmer with good cropland.

State ASC office proposed all minimum $6 rates be increased to $7. Department denied request, stating $6 rate represents an upgrading in rate, while the $12 rate represents some downgrading, and concluded more information available to substantiate lower rate than higher rate.

Land values of 14 counties with $6 rate indicate land could be paid for at $6 rate within 2.1 to 3.7 years. Participation in these counties was 1.7 percent of cropland; national average was 1.5 percent. Land values for 9 southeastern counties with $10 to $12 rates indicate this land could be paid for at CRP rate within 7.4 to 14.6 years. Participation in these counties was approximately 0.5 percent total cropland.

E. MISSISSIPPI

Preliminary cumulative figures show participation for 1956 and 1957 amounted to 48,970 acres. In 1957 producers will receive annual payments of $486,000 and will earn an estimated $561,000 as practice payments.

State and county ASC officials attributed light participation (13.8 percent of goal) to high land values as compared to CRP rates. They knew of only five contracts which approximated $5,000 limitation.

County officials of Sunflower and Washington Counties, where participation was heaviest, said farmers participated because—

1. They had surplus land for which there was no other use.
2. Crops of soybeans, normally grown, has been poor in recent years.
3. Some farmers are changing from crops to livestock.
4. Small farmers have obtained other employment.

High land values generally precluded land speculation. Purchase of 1,750-acre farm for reputed price of $175,000 cited. Buyer placed 526.3 acres in CRP for 5 years; annual payments will be $4,999.85. Also placed 190.3 acres in cotton ARP for which he will receive $14,653.10 during 1957. Total CRP and ARP payments in 1957 amount to $19,652.95, or 11.2 percent of investment. In addition, buyer may harvest 110.9 acres of cotton and 445 acres of other soil bank base crops during 1957.

F. ARKANSAS

Preliminary cumulative figures show participation for 1956 and 1957 amounted to 61,526 acres. In 1957 producers will receive annual payments of $497,000, and will earn an estimated $701,000 as practice payments.

State and county ASC officials attributed light participation (14 percent of goal) to high land values as compared to CRP rates. They knew of only one $5,000 contract.

City water and light plant, Jonesboro, Ark., placed 653.2 acres in CRP for 5 years for annual payment of $3,543.10. Company owns 920 acres of land with no allotments. For past several years land leased on cash rental basis for $2,000. Company unable to lease land in 1956 and, therefore, placed land in 1957 CRP.

I. Conservation-Reserve Program

A. Introduction

The staff, in its March 1957 report, set forth information with respect to eligibility of land, terms of contracts, and permissible conservation practices.

The objective of the conservation-reserve program (CRP) is to take general cropland out of production and put it to conservation use. Generally all land used for cultivated crops or for tame hay is eligible. Producers taking part in this program receive an annual payment for the period of the contract. This payment for 1957 was the same as for 1956 and ranged from $6 to $14 an acre, with the national average $10 an acre. They also will receive a practice payment for carrying out a conservation practice on the acreage.

Contracts run for 3, 5, or 10 years if the land is already in an approved cover crop, and for 5 or 10 years if cover must be established. If trees are to be planted as the conservation practice, the contracts may be for 15 years.

Farmers must plant the conservation-reserve acreage to approved grasses, legumes, or trees, or devote it to a soil, water, forest, or wildlife conservation practice. Crops may not be harvested from the reserve acres, and grazing on such acreage is prohibited unless special authorization is obtained due to an emergency. Farmers must comply with all acreage allotments to be eligible for payments under the CRP.

The Soil Bank Act, as passed in 1956, provided that total payments under the CRP could not exceed $450 million in any 1 year. This limitation was effective for both the 1956 and 1957 programs; however, the 1st session of the 85th Congress amended the act to restrict payments under the CRP in 1958 to $325 million.

The Soil Bank Division, in a bulletin dated November 26, 1956, allocated $300 million of the $450 million appropriation for CRP to the various States for the 1957 program. Any State that committed its original allocation could obtain additional funds until such time as the entire $450 million was allocated and obligated. During the spring of 1957, Colorado, New Mexico, South Dakota, Texas, and Utah received additional allocations totaling $22,352,000, which increased the total allocated funds to $322,352,000. It is noted that the obligated annual payments for 1957 and the estimated practice payments which will be earned during 1957 total $103,127,000, or less than 25 percent of the appropriated funds.

B. Participation under 1956 program

The staff previously reported that preliminary figures showed that producers had placed 1,001,403 acres in the 1956 CRP, for which they were to receive annual payments of $13,792,307. Also, producers had contracted under the 1956 program to perform certain practices for which they were to receive $11,105,946 when the practices had been performed. The preliminary figures, therefore, indicated that total obligated funds amounted to $24,898,253 during the first year of the CRP.

Final figures for the 1956 CRP, released during August 1957, show that 1,428,772 acres had been placed in the CRP, for which producers

were paid $12,400,806 as annual payments, as distinct from practice payments. The final figures also show that producers had earned practice payments totaling $750,328 during 1956; however, the unearned practice payments obligated under the 1956 CRP are now shown. Mr. Kenneth E. Valentine, Program Analysis Branch, Soil Bank Division, said obligated practice payments are not segregated according to year of obligation. He said unearned practice payments obligated under the 1956 program are shown on the records as part of the cumulative total obligated to date. When the producer is paid for a particular practice, the county ASC office indicates the year of obligation so that the payment may be charged against funds for that year.

Mr. Valentine said, while final annual payments were somewhat less than the preliminary figure, it was his opinion that the final amount obligated for practice payments would be approximately the same as the preliminary figure. Therefore, the final amount obligated under the 1956 CRP would be approximately $23,506,752, or 5.2 percent of funds appropriated for the 1956 program.

The final figures show that Texas producers placed 603,227 acres in the CRP, or 42 percent of the total acreage. They were paid $5,701,545, or 46 percent of total annual payments for 1956.

C. PARTICIPATION UNDER 1957 PROGRAM

While the final signup date for the 1957 program was April 15, 1957, the staff has been advised that final figures will not be available until sometime subsequent to February 1958.

The latest progress report issued by the Soil Bank Division compiles data reported through July 15, 1957. This report shows that the cumulative total acreage now in the CRP is 6,537,932 acres, of which 5,109,160 acres were signed up under the 1957 program. The cumulative total annual payments obligated for 1957 are $58,052,000, which indicates that annual payments of $45,651,194 were obligated under the 1957 program. Practice payments obligated for 1957 and subsequent years total $60,604,000, of which amount it was estimated that $45,075,000 would be earned during 1957.

Obligated annual payments and the estimated practice payments which will be earned during 1957 total $103,127,000, or less than 25 percent of the appropriated funds. This is especially significant because the $103,127,000 includes estimated practice payments of $45,075,000 which is a nonrecurring expense.

The staff previously reported the principal reasons for nonparticipation, which reasons included:

1. High value of land in relation to maximum CRP payment rate makes it uneconomical for many farmers to participate.
2. Farmers are reluctant to tie up their land with long-term contracts.
3. Farmers are reluctant to place land in the CRP because, if they do, they must comply with all allotments as well as the soil-bank base acreage.

The following table shows the cumulative acreage goals, cumulative actual acreage, revised allocation of dollars to States, obligated annual payments, and estimated practice payments that will be earned during

1957. Except for the data with respect to goals and revised allocation of dollars to States, the figures set forth were obtained from the July 15, 1957, progress report.

State	Acreage goal (thousands)	Actual acreage signed up	Allocation to States (thousands)	Obligated annual payments (thousands)	Estimated practice payments earned 1957 (thousands)	Total annual and practice payments (thousands)
Alabama	360	58,740	$6,037	$446	$650	$1,096
Arizona	50	7,287	556	99	70	169
Arkansas	435	61,526	7,160	497	701	1,198
California	495	27,966	6,777	266	145	411
Colorado	640	479,929	7,037	3,423	1,597	5,020
Connecticut	27	72	589	1	2	3
Delaware	18	1,063	383	12	20	32
Florida	125	62,252	2,119	439	524	963
Georgia	320	234,080	7,422	1,745	2,174	3,919
Idaho	265	46,496	2,902	245	225	580
Illinois	680	11,367	12,569	131	280	411
Indiana	805	23,587	9,632	347	344	691
Iowa	900	30,715	15,880	572	563	1,136
Kansas	1,385	213,487	18,807	2,145	1,627	3,732
Kentucky	585	20,516	10,516	186	457	643
Louisiana	280	19,469	5,038	136	97	233
Maine	70	36,358	1,434	215	491	706
Maryland	100	12,087	2,147	133	134	267
Massachusetts	35	233	754	2	5	7
Michigan	485	115,020	8,929	575	906	1,781
Minnesota	735	563,474	11,274	5,272	3,017	8,289
Mississippi	355	43,970	6,311	486	561	1,047
Missouri	630	69,814	13,865	593	2,641	3,234
Montana	780	79,915	7,861	680	397	1,077
Nebraska	790	109,213	9,871	678	677	1,355
Nevada	17	13	172	(1)	(1)	(1)
New Hampshire	24	513	482	2	8	10
New Jersey	50	5,512	1,042	61	73	134
New Mexico	135	660,263	9,500	5,340	1,701	7,041
New York	430	80,322	9,256	711	1,380	2,091
North Carolina	275	28,116	4,943	270	432	702
North Dakota	1,200	484,222	12,970	4,668	2,671	7,339
Ohio	480	20,807	9,247	429	461	890
Oklahoma	710	374,560	8,809	3,200	1,191	4,391
Oregon	260	42,139	3,075	443	580	1,023
Pennsylvania	365	37,663	7,265	355	261	616
Rhode Island	4		87			
South Carolina	195	102,783	3,325	901	897	1,798
South Dakota	820	412,364	9,123	3,556	3,208	6,764
Tennessee	320	30,143	9,884	357	979	1,336
Texas	1,680	1,628,977	22,500	15,544	10,324	25,868
Utah	85	75,220	1,252	663	518	1,181
Vermont	70	2,460	1,427	8	33	41
Virginia	260	6,730	5,103	86	82	141
Washington	430	15,109	5,461	179	161	340
West Virginia	110	1,009	2,089	7	6	13
Wisconsin	640	123,800	12,162	1,116	1,271	2,387
Wyoming	120	32,008	1,074	235	144	379
Total	20,000	6,537,923	322,343	56,052	46,075	103,127

[1] $500 or less.

The above table shows that, in terms of acreage, producers in Texas, New Mexico, Minnesota, North Dakota, Colorado, and South Dakota were the largest participants in the CRP. Producers in Texas alone placed 1,628,977 acres in the CRP, or approximately 24.9 percent of the total national acreage. Producers in these 6 States placed 4,229,219 acres in the CRP, or 64.7 percent of the total acreage placed in the CRP.

The staff's survey showed that the greatest participation in Texas, New Mexico, Colorado, and South Dakota is concentrated in counties which had suffered from drought for periods of time ranging up to 7 years.

Officials of the Soil Bank Division confirmed this finding when they stated the prolonged drought in Texas and New Mexico influenced farmers to place land in the CRP as a means of obtaining income while shifting from cultivated crops back to grass and into a livestock economy. They said this shift is indicated by the fact that almost all of the entire acreage placed in the CRP in Texas and New Mexico will be devoted to permanent grass. They said that this land-use adjustment had been advocated for some time by various Government programs, such as the Great Plains program.

Officials of the Soil Bank Division also stated that in Colorado and South Dakota there seemed to be more interest in the CRP in areas where production risks were relatively high, but they said an early and vigorous publicity campaign also was responsible for heavy participation in Colorado, Minnesota, and South Dakota.

The effect of the drought is illustrated by the fact that the Federal Crop Insurance Corporation (FCIC) canceled its crop-insurance program for 14 counties in Texas, New Mexico, and Colorado for 1956 because of heavy losses suffered since 1948. The following is a summary of CRP participation by producers within these 14 counties, together with the percentage that such participation bears to the total for the State. It will be noted that the total acreage placed in the CRP within these 14 counties was 646,903 acres, which represents 9.9 percent of the total acreage placed in the CRP.

State	Acres in conservation-reserve program	Percent of total State participation
Texas	169,258	3.1
New Mexico	318,508	6.1
Colorado	160,137	2.4
Total	646,903	

Since 1948, the FCIC suffered a loss of $18,291,865 insuring crops in these 14 counties. The largest single loss, $3,512,224, was suffered in Curry County, N. Mex., in which county producers placed 191,821 acres in the CRP, or 29.1 percent of this State's total participation.

It is also noteworthy that the FCIC since 1948 has suffered losses totaling $13,449,352 insuring crops in 46 other counties in the Dust Bowl area. Three such counties are Cheyenne, Lincoln, and Kit Carson, in Colorado, in which counties the FCIC has suffered a loss of $3,856,246 insuring crops since 1948. While the FCIC has not canceled its crop-insurance program for these counties, premiums charged to producers have been raised substantially. Producers in Cheyenne, Lincoln, and Kit Carson Counties placed a total of 126,381 acres in the CRP. This acreage, together with that located in counties in Colorado whose FCIC crop-insurance program was canceled, totals 286,518 acres, which represents 60 percent of the total acreage in the entire State of Colorado that has been placed in the CRP.

The staff has been advised by officials of the Soil Bank Division that participation in Minnesota is concentrated in the northern half of the State. Much of this land was timberland prior to World War II, but, with the large postwar demand for lumber, trees were cut from large areas in this part of Minnesota and not replanted. Farmers

attempted to raise crops on the land cleared of trees, but found the land relatively unproductive. Many of the farmers who have placed their land in the CRP have done so with the intention of replanting trees, which indicates a shift from cultivated crops back to the production of timber.

That drought had an effect on the participation in South Dakota is evidenced by the fact that, as of October 8, 1956, part or all of 35 of South Dakota's 68 counties were designated as disaster areas by the USDA.

It will be observed that, except for Texas, New Mexico, Minnesota, Colorado, and South Dakota, the actual acreage signed up was much less than the goals, and the dollars obligated were well below funds appropriated. In this regard, the staff calls attention to the small participation by producers in the commercial Corn and Wheat Belts and in the important cotton-producing States. The reasons for this small participation have been set forth previously.

The CRP Handbook states that State ASC committees shall establish a regular annual payment rate per acre for each county, taking into consideration (1) cash value of land for production of commodities; (2) cash rentals of land for production of commodities; and (3) productivity of land. Officials said that, while no specific instruction are given to the State ASC offices, they were told to be guided by the Bureau of the Census data with respect to land values which include buildings and Agricultural Marketing Service statistics with respect to productivity of land. They pointed out, however, that State offices were not told how to weigh each of the three factors when determining county annual rates.

II. Findings by States

In addition to a general review of the overall CRP with soil-bank officials in Washington, the staff reviewed the program at the State and county level in Texas, New Mexico, Colorado, South Dakota, Mississippi, and Arkansas. The purpose of the survey at the State and county level was to determine:

1. Reason for heavy or light participation in program by producers.
2. Extent to which program caused land speculation and relationship of land values to CRP rates.
3. Extent to which $5,000 limitation has been circumvented by establishment of trusts, partnerships, or sale of land.

The data with respect to participation is that reported through July 15, 1957. No adjustment was made to the figures contained in the progress report, because any differences noted as a result of a review of later records at the State or county level were minor.

The Soil Bank Division furnished the staff with statistics prepared as of May 31, 1957, that show the percentage of cropland by counties that has been placed in the CRP. These percentages are based on total cropland compiled by the Bureau of the Census during 1954, as no other cropland figures are readily available.

Unless otherwise stated, when the staff compares land values to CRP rates and participation of producers within specific counties to total cropland within such counties it has used the 1954 Bureau of the Census data as the basis for the comparison.

A. TEXAS

Producers in Texas have placed 1,628,977 acres in the CRP, which is approximately the goal of 1,680,000 acres that was originally established by the Soil Bank Division. For this participation, producers in Texas will receive annual payments in 1957 totaling $15,544,000, and it is estimated that they will earn practice payments totaling $10,324,000 during 1957.

While 226 counties of Texas's 254 counties participated in the CRP, an analysis of participation showed that 371,060 acres, or 22.1 percent, of the total acreage placed in the CRP was in 11 counties in the Panhandle.

The following table summarizes the participation in these 11 counties and shows the relationship of land values to the CRP rates established for the counties:

County	Acres in conservation-reserve program	Percentage cropland in conservation-reserve program	Average conservation-reserve program rate	Land value	Ratio, land value to conservation-reserve program rate
Armstrong	16,364	10.2	$10	$50.29	5.1
Briscoe	15,083	9.9	10	86.23	8.6
Childress	28,685	18.4	10	47.03	4.7
Collingsworth	32,783	14.8	10	66.84	6.7
Dallam	64,028	23.8	8	43.44	5.4
Deaf Smith	102,854	22.4	9	89.26	9.9
Hall	34,243	10.7	11	55.12	5.1
Hartley	24,068	11.3	9	35.04	3.8
Hemphill	10,085	11.7	9	32.86	3.7
Oldham	23,816	18.4	9	28.39	3.2
Wheeler	29,026	17.2	9	44.67	5.0
Total	371,060				

It is to be noted that land in the 11 counties in the Panhandle could be purchased and paid for at the CRP rate within a period of time ranging from 3.2 years for land in Oldham County to 9.9 years for land in Deaf Smith County. It should be emphasized that the land values set forth in the above table are those compiled by the Bureau of the Census in its 1954 agricultural census and represent the average value of all farmland, including the value of buildings.

Mr. W. K. Schoonover, Office of General Counsel, USDA, advised that the Department's regulations for CRP provide that the total of all annual payments under the CRP to any producer with respect to all farms in which he has an interest shall not exceed $5,000.

Mr. Schoonover advised, however, that the regulations do provide that with the approval of the Secretary, annual payments may exceed $5,000 if all eligible land on a farm is placed in the CRP or if the erosion hazard makes it advisable to waive the $5,000 limitation. The staff was also advised that no contracts in excess of $5,000 have been approved as an exception by the Secretary.

Mr. Schoonover confirmed information the staff received to the effect that the USDA had encountered more problems in interpreting the $5,000 limitation in Deaf Smith County than in any other county in the country because of division of title and establishment of trusts.

In order to understand the problems involved in the administration of the program, there are set forth below some of the pertinent regulations and the Department's interpretation of them:

The Department defines the word "producer" as follows:

"Producer" means any person who is an owner, landlord, cash tenant, standing-rent tenant, fixed-rent tenant, share tenant, or sharecropper on the farm, and includes a person who furnishes water for a share of the crop or proceeds thereof.

Mr. Schoonover advised that the Department's interpretation of a producer includes any person who is an owner, whether it is a tenancy in joint or in common. This makes all individual owners of land eligible to participate in the CRP up to the maximum of $5,000. It also makes a partnership a person providing the partnership was established prior to the enactment of the Soil Bank Act. According to Mr. Schoonover under this interpretation owners in common who maintain a partnership as an operator are entitled to $5,000 for each individual and $5,000 for the partnership. A partnership which is a land owner is entitled to only $5,000. Land owned in common and leased for operation to a partnership, each owner is entitled to $5,000 and the partnership is limited to $5,000.

The Department's original regulations also provide:

All or any part of the annual payment which otherwise would be due any producer may be withheld, or required to be refunded, if he has adopted, or participated in adopting, any scheme or device designed to evade, or which has the effect of evading, the limitation established by this step.

1. "Scheme or device" includes the dissolution, reorganization, revival, formation, or use of any corporation, partnership, estate, trust, or any other means designed to evade, or which has the effect of evading, these provisions.

By amendment dated May 10, 1957, the Department's instructions with respect to schemes or devices were supplemented as follows:

(a) * * * Effective as of the date of this amendment, a family trust created after August 15, 1956, shall be considered a scheme or device to evade the $5,000 maximum annual payment limitation if it results in the settlor (person who creates the trust) and beneficiaries of the trust receiving in the aggregate annual payments for any year in excess of $5,000 for all land placed in the conservation reserve. For the purpose of this provision, a family shall include the husband or wife, children, their husbands and wives, and other members of the immediate household. * * *

The Department's interpretation of a trust permits one or more trusts in a household providing that the settlor and beneficiaries do not receive in the aggregate annual payments in excess of $5,000. This provision, however, did not take effect until May 10, 1957. Mr. Schoonover advised that if there was any contract approved prior to May 10, 1957, which contained a trust established after August 15, 1956, this contract could be reviewed by the Office of the General Counsel to determine whether the trust was a scheme or device to evade the $5,000 limitation.

While no specific instructions were issued by the Department to the county offices, Mr. Schoonover advised that when the Department learned of any problems of trusts arising in the counties, they were instructed to send the cases to Washington for review prior to approving the contracts.

The regulations covering trusts were further amended effective November 27, 1957, by adding the following:

Effective with respect to contracts entered into on or about November 15, 1957, for the purpose of this section, a family shall include grandchildren of the settlor, stepchildren of a child of the settlor, and any minors related to the settlor by blood or marriage.

Mr. Thomas E. Hamilton, Deputy Director, Soil Bank Division, stated that the purpose of this amendment was to further strengthen the regulations regarding the establishment of family trusts for the purpose of participating in the CRP.

1. Deaf Smith County

Mr. F. G. Collier, county ASC office manager, advised that Deaf Smith County consists of 1,507 square miles, or aproximately 964,480 acres. Cropland within the county totals 580,650 acres, 193,550 acres of which are irrigated and 387,100 are dry.

Producers in Deaf Smith County have placed 102,854 acres in the CRP for which they will receive annual payments in 1957 totaling $952,244. In addition, it is estimated that they will earn practice payments of $363,135 during 1957.

Mr. Collier advised that almost all the land placed in the CRP was dry land located in the western part of the county and, therefore, it will be observed that approximately 26.6 percent of all the county's dry cropland has been placed in the program. Mr. Collier said, while the land placed in the CRP is as good as the irrigated land in the eastern part of the county, the lack of moisture has made it less productive.

Mr. Henry Carder, program specialist, Texas State ASC office, advised that Deaf Smith County, acreagewise and moneywise, had the greatest participation in the CRP of any county in the State. He stated he had made several inquiries into the reasons for this heavy participation and gave the following as the reasons:

1. The county is one of the largest counties in the State and has many producers who own or operate large farms.
2. When the dry land in the western part of the county was first broken out about 25 years ago, too much was broken out and, with the advent of wheat allotments, there was more land than was needed for crop production.
3. The county has suffered a severe drought for the past 7 years and the CRP enabled the farmers to place part of their land in the program as a "cushion" to insure a fixed income.
4. The program assisted the farmers to return some land to grass, enabling them to do more diversified farming, including not only the raising of wheat and grain sorghums, but also cattle.
5. The county office had done an excellent job in selling the program to the farmers and producers.

Mr. Collier confirmed the fact that producers in the western part of Deaf Smith County have suffered from a severe drought during the past 7 years. He stated that soil bank base crops grown in this area are wheat and grain sorghums. When his office computes a farm's soil bank base, it uses as a guide the farm's wheat allotment, since this is a matter of record. Since his office has no record of a farm's production of grain sorghums, it is necessary to take the farmer's word for the number of acres devoted to the production of grain sorghums. He stated that this done only if his office feels that the acreage figures given to the office by the farmer are reasonable.

Mr. Collier stated, however, that allowance is made for drought, and if the farmer had tilled his land and was ready to plant either wheat or grain sorghums but could not do so because of the drought, the acreage would be included as soil bank base acreage.

While the CRP regulations provide that acreage devoted to soil bank base crops may be adjusted upward or downward by the county committee "when necessary to make due allowance for abnormal weather conditions," the staff believes that, in areas of severe drought, the county committees have interpreted this regulation too liberally when fixing soil bank base acreage.

State and county ASC officials estimated dryland values in the county at from $60 to $90 an acre. Mr. A. J. Schroeter, owner of A. O. Thompson Abstract Co., Hereford, Tex., estimated that dryland was worth from $50 to $75 an acre. Mr. V. O. Hennen, executive vice president, First National Bank, Hereford, Tex., concurred with Mr. Schroeter's estimate.

Mr. Schroeter said that shortly after the soil bank was announced, his business more than doubled for a period of 3 or 4 months, indicating a large number of land transfers. Mr. Hennen also advised that, after the soil bank was initiated, nonresidents bought or attempted to buy land in the county. However, farmers soon increased the price of their land and, within a few weeks, this type of land speculation ceased.

(*a*) *Contracts involving division of title.*—The staff reviewed a sample of Deaf Smith County's CRP files, particularly those that were modified due to division of title or indicated that the $5,000 limitation may have been exceeded. The following are three cases illustrating division of title:

Case No. 1: During 1956, Mr. Albert F. Roberts, Adrian, Tex., owner of a 3,392-acre farm, was negotiating with the county ASC office to place sufficient acreage in the CRP so that both he and his wife could obtain the $5,000 maximum payment. The ASC office would only permit Mr. Roberts to place enough acreage in the CRP to obtain one maximum payment of $5,000 because it considered the farm to be community property between Mr. Roberts and his wife.

On November 5, 1956, Mr. Roberts signed CRP contract No. 41 placing 552.3 acres in CRP for 10 years for an annual payment of $4,970.70.

The county court records reflect that the following deeds were recorded on October 16, 1956. On that date, A. F. Roberts deeded to his wife, Irma, for $1 and other valuable considerations, as her separate estate, 640 acres of the farm. In another deed, A. F. Roberts and his wife deeded to one N. P. Spradley, for the same consideration, 640 acres of the farm. In a third deed, N. P. Spradley conveyed the same land back to A. F. Roberts, as his separate estate, for $1 and other valuable considerations.

By deeds recorded on January 10, 1957, A. F. Roberts and his wife, for $10 and other valuable considerations, deeded to their daughter, Alice Roberts Barker, 640 acres of the farm, as her separate estate. In a second deed, Roberts and his wife, for $10 and other valuable considerations, deeded 640 acres of the farm to their daughter-in-law, Harriett Blum Roberts as her separate estate.

On January 10, 1957, A. F. Roberts and members of his family to whom he had deeded portions of his farm offered modified CRP contract No. 41–A. In this contract, A. F. Roberts offered to place in the CRP for 10 years the same 552.3 acres which he placed in the CRP by contract No. 41, in 1956. His wife, Irma Roberts, his daughter,

Alice Roberts Barker, and his daughter-in-law, Harriett Blum Roberts, each offered to place 555.5 acres in the CRP for a period of 10 years for an annual payment of $4,999.50 each. As a result of this contract, it will be seen that Roberts and his relatives offered to place 2,218.8 acres in the CRP for a total annual compensation of $19,969.20.

On April 12, 1957, Irma Roberts filed a petition in the district court (State court) of Deaf Smith County, Tex., asking that her marital disabilities be removed and specifically asking the court to ratify her CRP contract with the Federal Government. On April 13, 1957, the court ordered the removal of the marital disabilities of Irma Roberts and ratified her powers to enter into a CRP contract with the Federal Government.

Mr. Collier advised that because of the divisions of title and the court action, the county office would not approve the contract and submitted it to the State ASC office for a determination. By memorandums dated April 23 and May 9, 1957, the State office advised that it concluded that the partition of the land between the members of the family was a scheme or device for the purpose of participating in the CRP in excess of the $5,000 limitation.

Mr. Collier stated, however, that by memorandum dated May 29, 1957, the State office reversed its previous decision and said that modified CRP contract 41–A should be approved if the daughter and daughter-in-law were adults. The State office made this decision after discussing the contract with the Soil Bank Division and indicated the decision that each of the 4 persons could participate in the program to the extent of the maximum $5,000 limitation was based upon the fact that each of the parties are separate and apart from each other as far as owning and operating the tracts of land and Mr. Roberts himself would receive no benefit from the payments made to the other parties.

By the transfer of title to specific tracts of land owned by Roberts, Roberts and his relatives will receive an annual CRP payment of $19,969.20 for 10 years or a total of $199,692. Had Roberts not subdivided his land as described above, total payments on this land over a 10-year period would have been limited to $50,000.

It is noted that Alice Roberts Barker resides in Carmel, Calif., and Harriett Blum Roberts in Sabetha, Kans.

Case No. 2: On July 11, 1951, Walter B. Mills and his wife, Bonnie, purchased a farm of approximately 3,580 acres for $196,900. By six deeds recorded on November 20, 1956, Mills sold specific tracts of this farm to Bertie O. Bagwell, Donald L. Bagwell, Johnnye Bagwell Doshier, T. L. Leach, James Elliott Weeks, and James Elliott Weeks, Jr., for $187,950. Mr. Collier advised that all of these purchasers are related by blood or marriage, but to his knowledge are not related to Mills.

On November 21, 1956, these 6 individuals signed CRP contract No. 104, placing 1,914.6 acres in the CRP for 10 years for an annual payment of $17,231.40. Mr. Collier said more land was not placed in the 1956 CRP because the land was in crop production.

On December 20, 1956, the same 6 individuals signed modified CRP contract No. 104–A, placing an additional 1,267.1 acres in the CRP for 10 years at an additional annual payment of $11,403.90. This modification brings the total acreage in the CRP to 3,181.7 acres and the annual payments to $28,635.30. Had Mills and his wife not sold

this land, Mills would have been entitled to only the $5,000 maximum payment annually, assuming that the land was community property.

Since the farm cost $187,950, the new owners will be able to pay off the cost from annual CRP payments in 6¾ years. Mr. Collier said this farm is operated as one unit by the husband of Johnnye Bagwell Doshier. It is significant that, according to Mr. Collier, 2 of the purchasers are housewives, 1 a professor and another an attorney.

Case No. 3: On October 24, 1956, Mr. E. H. Kromer, owner of a 2,692.6-acre farm with a soil-bank base of 1,782.5 acres, signed contract No. 78, placing 526.1 acres in the CRP for 10 years for an annual payment of $4,734.90.

Three deeds were recorded on November 27, 1956, involving division of title on this farm. E. H. Kromer and his wife, Nell, deeded to their son, W. Keith Kromer, 640 acres of their farm for a consideration of $28,844.80 secured by a vendors' lien for that amount at 4-percent interest, to be paid in 10 equal installments. In addition, the son assumed his proportionate share of Kromer's indebtedness of $40,000 on the farm, which was $9,555.20.

In another deed, Kromer and his wife deeded to their son-in-law, Bedford Harrison, Jr., 640 acres of their farm under the same terms.

In a third deed, Kromer and his wife deeded 640 acres to Thomas W. and Charlotte Risley, for $22,444.80 and their proportionate share of Kromers' indebtedness of $40,000 on the farm. The Risleys did not participate in the CRP.

On December 28, 1956, Bedford Harrison, Jr., and W. Keith Kromer, together with E. H. Kromer, signed modified contract No. 78–A. In this contract, E. H. Kromer placed the same acreage in the CRP as he had on October 24, 1956. Bedford Harrison, Jr., placed 329.4 acres in the CRP for 5 years at an annual compensation of $2,964.60, and W. Keith Kromer placed 325.8 acres in the CRP for 10 years at an annual compensation of $2,932.20.

As a result of the modified contract, acreage placed in the CRP increased from 526.1 to 1,181.3 acres and the compensation from $4,734.90 to $10,631.70.

(*b*) *Contracts involving divisions of title and trusts.*—The following are three cases involving divisions of title and establishment of trusts:

Case No. 1: For the past several years, Tom J. Boyd has owned a 8,797.4-acre farm in the county and his 3 sons, Richard B., William David, and Thomas B. Boyd, have operated the farm.

On November 23, 1956, Tom J. Boyd, Richard B. Boyd, and William David Boyd signed contract No. 2, placing 1,523.1 acres in CRP for 10 years at an annual compensation of $13,707.90. Shortly thereafter, Tom J. Boyd sold portions of this farm to various individuals, none of whom were his relatives.

By a deed recorded December 7, 1956, Boyd and his wife, Cleo, sold 640 acres to O. J. Cotton for $33,600. Boyd purchased this land on August 6, 1946, for $15,000.

On June 4, 1957, O. J. Cotton signed contract 2–B–2, placing 555.8 acres in CRP for 10 years at an annual compensation of $5,000. At this rate, Cotton will be able to pay for this land from annual payments in approximate 6¾ years.

By deed recorded December 19, 1956, Boyd and his wife sold 1,280 acres to R. H. Cotton, trustee, for $76,800. By a declaration of trust dated May 16, 1957, signed by R. H. Cotton, 640 acres of the 1,280 acres were held by Cotton under a trust agreement dated March 18, 1957, created by T. Carr Forrest, Jr., and his wife, Ruth, for the benefit of their 5 grandchildren. The trust is to be administered as five separate trusts, each holding a one-fifth interest in the property. The trust shall terminate upon the reaching of age 21 by the youngest grandchild, or by the trustee after any beneficiary reaches 21, but in no case may it be terminated in less than 10 years.

On June 4, 1957, R. H. Cotton, trustee, signed CRP contract No. 2–B–4, placing 555.5 acres of this land in the CRP for 10 years at an annual payment of $4,999.50. At this rate, the land will be paid for by CRP payments in less than 8 years.

By a trust agreement dated March 18, 1957, James A. Cotton established a trust for his four children with R. H. Cotton as trustee. This trust was for the other 640 acres purchased by R. H. Cotton from Boyd on December 19, 1956. This trust is to be administered as four separate trusts, each with an equal one-quarter interest. The trust will terminate when the younger child reaches 21 years of age, or by the trustee when any beneficiary reaches 21 years, but in no case may it be terminated in less than 10 years from date.

On June 4, 1957, R. H. Cotton, trustee, signed CRP contract No. 2–B–3, placing 555.5 acres of this land in the CRP for 10 years at an annual payment of $4,999.50. This land will also be paid for by CRP payments in less than 8 years.

By deed recorded December 19, 1956, Boyd and his wife sold 1,600 acres to W. P. Barnes for $96,000. By a trust agreement recorded on December 19, 1956, with R. H. Cotton as trustee, W. P. Barnes and his wife established a trust for their daughter, Naida L. Barnes. This covered 555 acres of the purchased land. Under the terms of the trust, the trustee was required to pay Mr. Barnes $23,000 with interest in 10 equal installments, and $9,000 on or before 10 years from date at 4 percent interest. It also provides the trust shall expire after 10 years at which time the beneficiary will receive full title to the land.

By a trust recorded December 19, 1956, Barnes established a similar trust for 555 acres of this land for his son, John L. Barnes, under the same terms.

By a trust recorded December 19, 1956, Barnes established a third trust for 490 acres of this land for his daughter, Jeanette B. Tower, under the same terms. By deed recorded May 27, 1957, R. H. Cotton, trustee, conveyed this land to Jeanette Tower as her separate estate and she agreed to assume the terms set forth under the trust.

On June 4, 1957, R. H. Cotton, as trustee for Naida L. Barnes and John L. Barnes, and as attorney in fact for Jeanette B. Tower, placed 1,101.2 acres of their land in the CRP for 10 years under contract No. 2–B–5, calling for an annual payment of $9,910.80. Tower receives one-half of this payment and the two trusts $2,477.70 each. Under these terms the 1,600-acre farm will be paid for in less than 10 years by CRP payments received for placing only 1,101.2 acres in the CRP.

As a result of the reconstitution of Boyd's farm, a modified CRP contract No. 2–B–1, was signed by the Boyds on June 4, 1957, calling for the following:

Participants	Period of contract	Acres in conservation reserve program	Annual payment
Richard B. Boyd	1956 to 1965	457.9	$4,121.10
Thomas B. Boyd	1957 to 1966	488.5	4,396.50
William D. Boyd	1957 to 1966	311.3	2,801.70
Total		1,257.7	11,319.30

While Tom J. Boyd signed the above contract, he received no part of the compensation.

It is significant to note after the reconstitution the farm had 5,320.3 acres, with a 1,257.7-acre soil-bank base, and the entire amount was placed in the CRP. Therefore, by the division of title and creation of trusts, the acreage placed in CRP increased from 1,523.1 to 4,025.7, and the annual payments increased from $13,707.90 to $36,229.10.

Case No. 2: By deed recorded October 15, 1956, Hubert L. Turner purchased from B. Sherrod 1,920 acres for $10 cash and a promissory note of $83,200, to be paid in 10 equal installments at 5 percent interest. This deed reflected $172.25 in revenue stamps.

By a second deed recorded on the same date Turner purchased from Sherrod 1,600 acres for $10 and other considerations. This deed carried no revenue stamps.

It appears, from the amount of revenue stamps affixed to the first deed, that the full purchase price of the 3,520 acres, although not set forth in the 2 deeds, was approximately $156,590, or $44.49 an acre.

Since the CRP regulations limit annual payments to any 1 individual to $5,000, Turner would have been permitted to participate in the CRP only to the extent of this limitation. However, through the following division of title and establishment of trusts, Turner's relatives will receive $24,997.50 annually for 10 years.

By 2 deeds recorded February 25, 1957, Turner and his wife sold to their 2 sons-in-law, W. C. Johnson and Billy Doyle Walls, 556 acres each of this land for $33,360 per deed.

By a declaration of trust recorded February 25, 1957, Turner and his wife sold to John T. Boyd, trustee, 556 acres of this land for $33,360, in trust for their son, Beverly Joe Turner. The trust will terminate when the beneficiary reaches 21 years of age or death.

By a declaration of trust recorded February 25, 1957, Turner and his wife sold to John T. Boyd, trustee, 572 acres of this land for $34,320, in trust for their grandson, Doyle Wesley Walls, the trust to terminate when the beneficiary reaches 21 or death.

By a declaration of trust recorded February 25, 1957, Turner and his wife sold John T. Boyd, trustee, 556 acres of this land for $33,360, in trust for their granddaughter, Deborah Jane Johnson, the trust to terminate when beneficiary reaches 21 years or death.

By a declaration of trust recorded March 4, 1957, Turner and his wife sold to John T. Boyd, trustee, 168 acres of this land for $10,080,

in trust for their granddaughter, Amelia Ann Johnson, the trust to terminate when beneficiary reaches 21 years or death.

Finally, on June 5, 1957, these purchasers and the trustee signed CRP contract No. 224–A. This contract reflected that the farm had a soil bank base of 3,506.4 acres. The following schedule reflects how these purchasers participated:

Participant	Acres in conservation-reserve program	Period	Annual payment
W. C. Johnson	555.5	1957–66	$4,999.50
Billy Doyle Walls	555.5	1957–66	4,999.50
Deborah Janet Johnson and Amelia Ann Johnson Trusts	555.5	1957–66	4,999.50
Doyle Wesley Walls Trust	555.5	1957–66	4,999.50
Beverly Joe Turner Trust	555.5	1957–66	4,999.50
Total	2,777.5		24,997.50

It will be noted from the above conveyances that when Turner transferred title of part of his land to his relatives, 1 conveyance was for 168 acres, 1 was for 572 acres, and 4 were for 556 acres. The significance of the size of these conveyances is that the maximum payment permitted under CRP regulations is obtained by placing 555.5 acres in CRP. Turner retained title to 556 acres which he could not place in the CRP because he had established a trust for his son and this trust was included in CRP Contract No. 224–A in the amount of $4,999.50.

To summarize, Turner purchased 3,520 acres of land in October 1956 for approximately $44.49 an acre. By division of title and establishment of trusts in February and March 1957, Turner sold 2,964 acres of this land to his relatives at $60 an acre. The relatives will receive annual CRP payments of $24,997.50 for 10 years, or a total of $249,975, and will be able to pay for this land through CRP payments within approximately 7 years. Had Turner not sold the land, the maximum payment he could have received over a 10-year period would have been $50,000.

Case No. 3: Mr. Collier advised that C. T. Guseman, together with his wife, Genevieve, in 1956 controlled a farm of 22,247 acres, part of which was her separate estate. This farm had a soil-bank base of 7,452.7 acres.

Mr. Collier stated that during the past year and a half Guseman sold a portion of his farm to a daughter by a previous marriage, Cecilia J. Timberlake, and to individuals not related to him.

The records of the county court reflect numerous land transactions by Guseman, but only those bearing on the CRP are set forth.

By deed recorded October 23, 1956, Guseman sold 640 acres to his daughter, Cecilia J. Timberlake, for $22,400.

By deed recorded October 23, 1956, Guseman sold 1,280 acres to his wife as her own separate estate for $38,400.

By deed recorded December 3, 1956, Guseman sold approximately 320 acres to Mrs. G. E. Pinkerton for $16,800.

During November 1956, CRP Contract No. 146 was offered which included land involved in the above transactions. This contract reflected the following information:

Participant	Terms of contract	Acres in conservation-reserve program	Annual payment
Genevieve Guseman	1956-61	[1] 574.6	$5,000.00
Cecilia J. Timberlake	1956-61	[2] 422.3	3,693.70
O. T. Guseman	1956-61	573.2	5,000.00
Mrs. O. E. Pinkerton	1956-65	[3] 312.2	2,808.80
Total		1,982.3	16,702.50

[1] 266 acres represent land deeded to her by Guseman on Oct. 23, 1956.
[2] All 422.3 acres represent land deeded to her by Guseman on Oct. 23, 1956.
[3] All 312.2 acres represent land deeded to her by Guseman on Dec. 3, 1956.

By deed recorded January 9, 1957, Guseman and his wife sold 640 acres of the farm to W. B. Renfro for $32,000. By two deeds recorded July 16, 1957, this land was sold by Renfro and his wife; 320 acres each to their niece, Elizabeth Cesar, and her husband, Fain G. Cesar, for $16,000 each.

On January 16, 1957, the Cesars offered to place the following land in the CRP:

Participants	Terms of contract	Acres in conservation-reserve program	Annual payment
Elizabeth Cesar	1957-68	320	$2,880
Fain G. Cesar	1957-68	284	2,556
Total		604	5,436

This contract was offered on January 16, 1957, and was approved by the county committee on June 28, 1957. On the latter date, it was determined that Renfro had not deeded the land to the Cesars. The county office contacted Renfro, who advised that he had forgotten to deed the land and thereafter the deeds were recorded in the county clerk's office on July 16, 1957. Mr. Collier advised that when the contracts were signed by the Cesars, Mr. Renfro had advised the county office that he was conveying the land to the Cesars. It is noted that the Cesars reside in Oklahoma City. At the rate of the annual payments, the Cesars will be able to pay the cost of the land in less than 6 years.

By two deeds recorded January 21, 1957, Guseman sold to W. W. Shields, by each deed, 640 acres for $34,400.

By a declaration of trust recorded April 1, 1957, Shields sold 640 acres of this land to W. R. Potter, trustee, for $34,400. This trust makes John Thomas Shields, his son, beneficiary, The trust is to terminate when the beneficiary reaches 21 years of age, or death.

By a declaration of trust recorded April 12, 1957, Shields sold the remaining 640 acres of this land to W. R. Potter, trustee, for $18,400. This trust is for the benefit of Shields' daughter, Nancy K. Hardin. Subsequently, this land was deeded by the trustee to Nancy K. Hardin, as her separate estate, and she assumed the terms of the declaration of trust.

On January 7, 1957, W. R. Potter, trustee for John T. Shields, signed CRP contract No. 146-A, placing 555.5 acres in CRP for 10

years at an annual payment of $4,999.50. On the same date, Nancy K. Hardin signed CRP contract No. 146–A, placing 555.5 acres in CRP for 10 years at an annual payment of $4,999.50. At the annual payment rates, the original cost of the 1,280 acres can be paid in less than 7 years.

It is significant to note that this land was offered in the CRP prior to the time it was actually brought or the trusts were established. However, neither contract was approved by the county committee until after the land transactions were recorded.

As previously reported, C. T. Guseman and his wife, Genevieve, controlled a farm of 22,247 acres, part of which was her separate estate. If it is assumed that Mrs. Guseman owned at least 556 acres as her separate estate, then the maximum annual CRP payment that could have been obtained by the Gusemans would have been $10,000. However, through division of title and establishment of trusts, the annual CRP payments were increased to $32,135.50.

From the complexity of the six above-mentioned cases, it is difficult for the staff to understand how a county committee can properly appraise and approve such contracts without legal advice. It is true that some of these cases were referred to the State office and to the USDA in Washington for review. However, it would seem prudent to the staff that all such cases should be submitted for proper interpretation.

B. NEW MEXICO

Producers in New Mexico have placed 660,263 acres in the CPR, which is approximately 400 percent more than the goal of 135,000 acres that was originally established by the Soil Bank Division. For this participation, producers in New Mexico will receive annual payments in 1957 totaling $5,340,000. In addition, it is estimated that they will earn practice payments totaling $1,701,000 during 1957.

While producers within 23 of New Mexico's 31 counties participated in the CRP, an analysis of the participation indicated that 504,632 acres, or 76.4 percent, of the total acreage placed in the CRP was concentrated within 7 counties. The following table summarizes the participation of producers within these seven counties and shows the relationship of land values within such counties to the CRP rates established for the counties. It will be observed that in 5 counties land could be paid for at the CRP rate in less than 3 years. For the other 2 counties it would require 3.5 years for one and 6.4 years for the other.

County	Acres in conservation-reserve program	Percentage of cropland in conservation-reserve program	Conservation-reserve program rate	Land value	Ratio of land value to conservation-reserve program rate
Torrance	84,734	74	$6	$11.93	1.9
Socorro	18,350	71	6	11.12	1.9
Santa Fe	13,732	65	6	21.16	3.5
Harding	30,725	51	7	11.08	1.6
Quay	126,687	45	9	22.09	2.5
Union	39,393	41	8	16.23	2.0
Curry	191,831	35	9	57.60	6.4
Total	504,632				

This report previously mentioned that the FCIC canceled its crop-insurance program for 14 counties in Texas, New Mexico, and Colorado

for 1956. One of these was Curry County, N. Mex., in which county the FCIC had suffered an accumulated loss of $3,512,224 since 1948. Producers in Curry County placed 191,821 acres, or approximately 35 percent of their total cropland in the CRP. Because of this heavy participation and the large loss suffered by the FCIC since 1948, the staff concentrated its review of the CRP program in Curry County.

Mr. Ervin Duncan, office manager, Curry County ASC Office, Clovis, N. Mex., advised that there are approximately 1,100 farms in Curry County which have about 551,900 acres of cropland. As of July 15, 1957, producers in Curry County have executed 677 CRP agreements covering 191,821 acres, for which they will receive annual payments of $1,722,116. In addition, it is estimated that practice payments totaling $512,252 will be earned during 1957.

Mr. Duncan advised that there are 286 farms that have no ARP allotments which have their entire eligible acreage of 73,163 acres in the CRP. In addition there are 45 other farms with ARP allotments which have placed their entire ARP eligible acreage of 8,126 acres in the ARP and their entire eligible CRP acreage of 15,461 acres in the CRP. Thus, there are a total of 331 farms which have placed all their 96,750 eligible acres in either the ARP or the CRP.

Mr. Duncan advised that only 1 CRP contract is for 3 years. All the others are almost equally divided between 5- and 10-year contracts. The practice to be instituted under all contracts is practice A–2, which is permanent grass cover.

Mr. Duncan said that a long and severe drought in Curry County has been the cause for heavy participation in the CRP. He said the last good crop in Curry County was in 1949. From 1950 to date the crops have been very poor, due to the drought. Because of the drought, farmers have borrowed money to operate since 1950 and some were in serious financial condition when the soil-bank program was initiated. Mr. Duncan said the CRP presented an opportunity for farmers who were in bad financial condition to start paying off their debts.

Mr. Duncan advised that the soil-bank base is predicated upon acreage planted during the 2 years immediately preceding CRP. He said his office knew the wheat and cotton acreage of each farmer, because these are allotment crops. Information with respect to acreage planted to other soil-bank-base crops was furnished by the farmers. Mr. Duncan said that adjustment and allowance was made for the severe drought in computing the soil-bank-base acreage eligible for CRP.

Mr. Duncan stated that dry cropland in Curry County was worth between $50 and $60 an acre prior to the soil bank. He said, while it is his opinion that land values have increased very little, if any, because of either the ARP or the CRP, there have been several significant sales of land. He said the largest such sale was made by Gordon Wicks. The following summary of this sale was obtained from Mr. Duncan and the records of the Curry County ASC office.

Gordon Wicks and his former wife, Mavis Wicks Snow, in 1956 and prior thereto owned a farm consisting of 13,522 acres, of which 7,588.7 acres were cropland. The soil-bank base for this farm was 6,640 acres. During 1956 this farm was operated under the name of Wicks & Sons.

On October 8, 1956, Gordon Wicks executed an agreement in the name of Wicks & Sons, by which he placed 556.2 acres in the CRP for a

period of 10 years. For this participation Mr. Wicks was paid the maximum annual amount of $5,000 on March 14, 1957.

Prior to April 12, 1957, Mr. Wicks asked Mr. Duncan whether he could place sufficient additional land in the CRP so that he and his divorced wife, who retained an undivided one-half interest in the land, could each receive the $5,000 maximum payment. Mr. Duncan said this request was denied by the county committee, because it considered that an undivided interest constituted a partnership.

It is noted this decision was made by the county committee. However, Mr. Wear K. Schoonover, Office of General Counsel, USDA, said this was contrary to the interpretation of the Department and that Wicks and his wife each should have been permitted to enter the maximum amount in the program.

On April 12, 1957, Mr. Wicks brought the following 12 individuals to the ASC office and advised that he had sold each of them specific tracts of his farm:

Victor Stout, Portales, N. Mex.	Billy M. McCasland, Clovis, N. Mex.
Wayne Stout, Broadview, N. Mex.	Andrew Don McCasland, Clovis, N. Mex.
F. D. Stout, Broadview, N. Mex.	Lynn L. Martin, Clovis, N. Mex.
Gerald D. Hastin, Clovis, N. Mex.	B. V. Martin, Clovis, N. Mex.
Joe B. Sisler, Clovis, N. Mex.	Charles E. Green, Clovis, N. Mex.
Gene Pettigrew, Clovis, N. Mex.	Paul F. Reed, Clovis, N. Mex.

As evidence of the sale of his land to the above individuals, 12 contracts for deed, all of which were dated April 11, 1957, were furnished to the ASC office. The description of the land in the 12 contracts for deed indicated that Mr. Wicks had sold approximately 6,260 acres of his farm to these individuals. Mr. Duncan advised that, while some of the 12 purchasers were related to one another, he was quite certain that none of them was related in any way to Gordon Wicks.

The contracts for deed showed that the total purchase price for the land as discussed herein was $400,710. No downpayment was made on any of the 12 contracts and no interest was charged. The purchase price was to be paid in 10 equal annual installments totaling $40,071. Each purchaser is responsible for his own payment.

All 12 contracts contained the following significant paragraphs:

All liability on this agreement is conditioned and contingent upon second party's entering into a 10-year conservation agreement with the Curry County ASC, an agency of the Federal Government, under the terms of which second party shall receive annual payments of not less than $9 per acre for not less than 70 percent of the cultivated portion of the above described land. Upon the execution of such ASC contract, liability upon this agreement shall become fixed.

In the event that the ASC contract above mentioned should be canceled by the Federal Government or any agency thereof prior to the expiration of the 10-year period above mentioned, then second party, at his option, shall be relieved of all future and further liability under the terms of this agreement, but likewise at his option may continue annual installment payments of one-tenth of the total consideration and comply with the terms of this agreement so as to be entitled to the warranty deed and abstract at the completion of the payment of the consideration as set out above.

As an additional consideration moving from first parties to second party, first parties agree to destroy any wheat presently growing upon the above described land which destruction may be necessary in order to qualify said land for participation in the conservation contract at no expense to second party. At second party's option, first parties agree to put in the cover crop in exchange for the Government payment therefor and/or at the buyer's option first parties will sow the grass required under the terms of the Government contract for a consideration of repayment of first parties' out-of-pocket expense plus 10 percent.

All contracts for deed stated that the annual payment was payable to Mr. Wicks on the date that the CRP payment was made to the buyer, or, in any event, no later than January 2 of each year. The contracts provided also that the unpaid principal shall be secured by an annual assignment of as much of the conservation reserve contract payment as may be necessary to pay the annual installment. It is noted Mr. Wicks sold most of the land at a price of approximately $65 an acre.

A check of the records of the county clerk failed to indicate that any of the 12 contracts for deed had been recorded.

On April 12, 1957, the 12 purchasers placed a total of 4,881.3 acres in the CRP for a 10-year period, for which they are to receive annual payments totaling $43,919.70.

A review of the 12 CRP agreements indicated that the total soil bank base for these farms was 5,289.2 acres. In three instances purchasers were unable to place all the land purchased in the CRP because of the $5,000 limitation.

It will be observed that, through the above sales, the annual CRP payments on land formerly owned by Gordon Wicks have been increased from a maximum of $5,000 to a total of $48,919.70. Since no downpayment and no interest was required on any of the contracts and all the contracts could be canceled in the event the Government terminated CRP payments, the staff believes that it is highly questionable whether Mr. Wicks could have consummated these sales had it not been for the CRP payments which financed the purchase of the land.

C. COLORADO

Producers in Colorado have placed 479,929 acres in the CRP, which is approximately 75 percent of the goal established by the Soil Bank Division. For this participation these producers will receive annual payments in 1957 totaling $3,423,000. In addition, it is estimated that they will also earn practice payments of $1,597,000 during 1957.

While producers in 44 of Colorado's 55 counties participated in the CRP, an analysis showed participation was concentrated in the east central and southeastern part of Colorado which has suffered from drought for the past several years. The following tabulation shows the counties in this area in which producers placed 10 percent or more of their cropland in the CRP. The significance of this tabulation is that the national average is only 1.5 percent.

County	Number of acres placed in conservation-reserve program	Number of acres of cropland	Percent conservation-reserve program acres to cropland acres
Baca	34,772	338,169	10.2
Cheyenne	47,672	405,621	11.6
Crowley	26,614	105,159	25.3
El Paso	30,922	105,129	29.1
Elbert	70,742	661,759	12.8
Las Animas	14,788	105,215	14.3
Otero	8,886	87,694	10.1
Total	239,956	1,841,186	14.2

It will be observed that producers in the above 7 counties placed a total of 220,806 acres in the CRP, which represents 46 percent of the State's total participation.

It should be pointed out also that the FCIC canceled its 1956 crop insurance program for Kiowa, Las Animas, and Otero Counties because of heavy losses since 1948. The FCIC also canceled its insurance program for two other southeastern counties, namely, Baca and Prowers. While participation in both of these counties was less than 10 percent of cropland, it did amount to 65,954 acres, or 13.7 percent of the State's total, and, therefore, producers in 9 counties accounted for 59.7 percent of Colorado's total CRP participation.

It was noted that producers in the 7 counties shown in the above tabulation had a wheat allotment of 470,198 acres, of which they put 408,953.5 acres, or 87 percent, in the ARP. The 2 counties which placed the most acreage in the CRP, Kiowa (70,742 acres) and Cheyenne (47,872 acres), also had the largest wheat allotments, and producers in these 2 counties placed 91 and 95 percent, respectfully, of their wheat allotments in the ARP.

In contrast to the above heavy participation, 3 northeastern counties—Logan, Sedgwick, and Phillips—placed 3, 10, and 6 percent, respectively, of their total wheat allotment in the 1957 ARP. It is noted that the CRP participation in these counties was less than 1 percent of their total cropland.

As previously reported, officials of the Soil Bank Division stated that there was more CRP participation in areas of Colorado, where production risks are relatively high.

The staff visited the Kiowa and Cheyenne County ASC offices as participation in these two counties was greater than in any other Colorado counties.

1. Kiowa County

CRP participation by producers in Kiowa County amounted to 70,742 acres. Kiowa County ASC officials informed the staff that this heavy participation was caused by the severe drought conditions within the county for the past several years. They said the last good crop in Kiowa County was in 1952, and that producers in the county count on only 1 good crop every 5 years.

County ASC officials advised the staff that the CRP has resulted in a considerable amount of land being sold within the county. They said land which sold for $12 to $15 an acre before the CRP was now being sold at $35 an acre. They stated that the land was being sold primarily because of the $5,000 limitation on CRP payments. The staff was advised by county ASC officials that Gano Properties, owned by Harold Nelson Hobart, Sr., Harold Nelson Hobart, Jr., and Gano Hobart Tschudy, had a considerable amount of land in Kiowa County, some of which was sold because of the $5,000 limitation.

ASC officials advised that Gano Properties first offered the land to be sold to its tenants and, if the tenants did not buy the land, Gano Properties then offered the land to out-of-State land buyers.

ASC officials advised that, when Gano Properties first offered to sell land to George Fuller, a tenant, at $35 an acre, he declined to buy the land because he felt the price was too high. However, on

April 15, 1957, the last day that Fuller could participate in the 1957 CRP, representatives of Gano Properties, accompanied by land buyers from Oklahoma and Kansas, came to Kiowa County and again offered to sell land to Fuller. At this time, since Gano Properties indicated it would sell the land to out-of-State buyers if he did not purchase it, Fuller decided he should purchase the Gano land, in order to protect his own land which was adjacent to the land Gano offered him. ASC officials pointed out that, because of the drought condition, Fuller was afraid that if he did not buy the land it might blow over to his farm. They also stated that another factor that prompted Fuller to pay $35 an acre was the fact that he could finance the purchase of this land through CRP payments.

A review of files of the Kiowa County ASC office revealed a contract for sale dated April 15, 1957, between Harold Nelson Hobart, Sr., Harold Nelson Hobart, Jr., and Gano Hobart Tschudy as sellers, and George Fuller as purchaser. By this contract George Fuller purchased 640 acres of land at $35 an acre, or a total of $22,400. This contract required no downpayment but did require Fuller to place the maximum permitted acreage in both the ARP and the CRP and to assign 75 percent of all payments to the sellers. The contract further provided that, if the annual payments so assigned did not amount to $2,800, Fuller was required to pay the difference to the sellers.

ASC officials cited the following CRP contracts which were executed by persons that purchased land from Gano Properties in April 1957. ASC officials advised that, while they do not have copies of the contract of sale with the other purchasers, it was their understanding that the others purchased the land under the same terms as Fuller. All CRP contracts except Fuller's were dated April 15, 1957. Fuller's CRP contract was dated April 7, 1957, or approximately a week before he purchased the land from Gano Properties.

Contract No.	Operator and owner	Number of acres	Rate per acre	Conservation-reserve program annual payment
213-57-66	George Fuller, Arlington, Colo.	457	$7	$3,199
214-57-66	Harry Grimwould, Arlington, Colo.	251	7	1,757
209-57-66	Preston D. Brewer, Booker, Tex.	555	7	3,885
223-57-66	O. G. Henderson, Beaver, Okla.	404	7	2,828
220-57-66	do.	101	7	707
221-57-66	do.	10	7	70
226-57-66	E. J. Harmon, Fowler, Kans.	278	7	1,946
225-57-66	do.	201	7	1,407
222-57-66	Thomas W. Johnson, Portales, N. Mex.	404	7	2,828
224-57-66	do.	177	7	1,239
	Total	2,788		19,516

It should be noted that the above tabulation indicates that 2,788 acres of land purchased from Gano Properties were placed in the CRP. The actual amount of land purchased from Gano Properties was considerably higher but could not be readily determined, inasmuch as the files of Kiowa County contained only one purchase agreement.

ASC officials advised further that Gano Properties also owned land in Crowley County, Colo., and had sold some of this land while it was appealing a decision by the Crowley County ASC office that the owners of Gano Properties were entitled to only one $5,000 CRP payment.

A fieldman from the Colorado State ASC office advised this staff that the estate of John W. Baughman was selling land for $20 an acre in Cheyenne, Kiowa, Lincoln, and Baca Counties. He said the administrators of the estate were selling the land to raise cash to pay inheritance taxes. The land was first offered to the tenant and, if it was not purchased by the tenant, it was then sold to other producers in the counties. This land was sold on a no-downpayment no-interest basis, and the CRP payments were used to finance the purchase of the land. The fieldman said the land sold was isolated "dog and cat" land and he had no doubt that the CRP enhanced the value of the land and made it possible to sell it for $20 an acre, because prior to the soil bank this land sold for approximately $12 an acre.

2. Cheyenne County

Producers in Cheyenne County placed 47,872 acres in the CRP. This participation was the second highest in the State. ASC officials said they would attribute this heavy participation to the fact that Cheyenne County has suffered from severe drought for the past several years.

3. Crowley County

The files of the Soil Bank Division contain the following information with respect to the sale of land by Gano Properties in Crowley County.

Gano Properties, owned by George Gano prior to his death in June 1952, owned a 30,000-acre farm in Crowley County. With the death of George Gano, his heirs, Harold Nelson Hobart, Sr., Harold Nelson Hobart, Jr., and Gano Hobart Tschudy, became the owners of Gano Properties. This farm, which consisted of 14,560 acres of cropland, was divided into two ranches, namely, the east ranch and the west ranch. While the two ranches were 15 miles apart, they were managed by George Hinds, apparently as one farm, for Gano Properties. In 1956 the county ASC office permitted only one CRP contract in the maximum amount of $5,000.

In November 1956 one of the Hobarts, who lived in Kansas City, contacted G. H. Penstone, General Counsel, USDA, Kansas City, Mo., to determine whether each of the three heirs could receive the maximum $5,000 payment under CRP, or a total of $15,000. Mr. Penstone referred this question to Edward M. Schulman, Deputy General Counsel, USDA, Washington, who stated in part in a telegram dated November 23, 1956, to Mr. Penstone:

> Conservation reserve annual payment limitation is applicable to each person earning payment separately. Therefore three tenants in common entitled to annual payment of up to $5,000 if participating in program as individuals and not in capacity of partnership or other joint operation. Suggest you not give categorical answer to question until all facts of farm operation known because of other facets to problems.

While the above telegram from Mr. Schulman seems to indicate that the three heirs might each qualify to receive the $5,000 maximum payments, the telegram was sent to Mr. Penstone, and there is no

indication that either the Colorado State ASC office or the Crowley County ASC office was advised of Mr. Schulman's opinion.

According to Mr. Wear K. Schoonover, Office of General Counsel, USDA, the contents of the telegram means that, since the land was owned in common, each owner was entitled to the $5,000. However, if the owners held the land as a partnership, they would be entitled to a total of $5,000, the maximum limitation.

During this same period, Mr. Hinds contacted the Crowley County ASC office and suggested the desirability of Gano Properties placing all of its eligible cropland, in excess of that placed in the ARP, in the CRP. In January 1957, the Crowley County ASC office wrote to the Colorado State ASC office and suggested that Gano Properties be permitted to place all its eligible cropland in the CRP. The county ASC office pointed out, however, that, in its opinion, the CRP rate should be no more than $2 an acre for this land. As reported heretofore, the USDA permitted no individual contracts in excess of $5,000 in 1957. However, if it had, and if Gano Properties had placed their remaining 11,620 acres of eligible cropland in the CRP, the annual payments at $2 an acre would have amounted to $23,240.

In February 1957, the Crowley County ASC Committee again refused to permit payments in excess of $5,000 on land owned by Gano Properties.

On March 7, 1957, a special meeting was held at the request of the Hobarts, who informed the county ASC office that Mr. Schulman, Deputy General Counsel, had furnished Mr. Penstone with an opinion which, in effect, said that each of the 3 heirs could receive the maximum $5,000 CRP payment. As a result of this meeting, the county ASC committee reversed its previous stand and indicated that the heirs could receive a total of $5,000 each.

On March 8, 1957, the Colorado State ASC Committee referred this matter to the Soil Bank Division in Washington, which declined to approve CRP annual payments in excess of $5,000 on land owned by Gano Properties. Following this decision, the Colorado State ASC office advised the Crowley County ASC Committee that only one $5,000 contract would be permitted and, thereafter, the county committee again reversed itself and informed the Hobarts of the opinion of the Soil Bank Division.

Shortly thereafter, Mr. S. E. Paul, general counsel, USDA, Denver, Colo., heard informally that the east ranch had been sold by Gano Properties to a number of individuals under separate contracts, and that the buyers had entered into CRP contracts with the Government. Mr. Paul further indicated he had been told that the land sold was not worth over $10 an acre, but had been sold for $35 an acre and was being financed by the buyers through CRP payments. Mr. Paul stated, with regard to the sale of the east ranch, that:

> If the Hobarts were not entitled to three contracts under the regulations but the arrangements which they have now made are unassailable, then this would seem to be a case wherein nothing succeeds like failure.

Prior to April 15, 1957, the 3 owners of Gano Properties again requested that each be permitted to obtain the $5,000 maximum payment. At this time, the Hobarts had conveyed 1,080 acres from the Gano Properties holdings to each of themselves as individuals, and each had offered and signed a CRP contract for an amount of land

which would give them the maximum $5,000 payment. However, the Crowley County ASC office advised them that the contracts still could not be approved, even though the land had been conveyed to them individually.

On April 26, 1957, a meeting was held between the attorney for the Hobarts, the USDA general counsel in Denver, and State ASC officials. At this meeting, the State ASC officials advised that, in making their determination that only one $5,000 payment was permissible under the regulations, they placed major emphasis on the fact that the land had been operated as a single unit prior to the passage of the Soil Bank Act. These officials further pointed out that the property was managed by Mr. Hinds, who kept all the income in a common fund, out of which all bills were paid, and the remaining profits, if any, were divided among the three Hobarts.

On May 3, 1957, the matter was referred by Mr. Paul to Mr. Schulman for an opinion. Mr. Schulman ruled on June 2, 1957, that the $5,000 limitation was a personal limitation and not a limitation on the farm as a unit. He stated that he did not believe that the partition of the land was a device to evade the $5,000 limitation and that, if otherwise not objectionable, the 3 separate CRP contracts with the Hobarts could be approved.

The staff was advised by the Crowley County ASC office that, as a result of Mr. Schulman's decision, the Hobarts have executed the following CRP contracts:

Contract No.	Name and address	Conservation-reserve program		
		Acres	Rate	Annual payment
122	Gano H. Trehudy, Kansas City, Mo.	327.6	$5	$1,638
123	Harold Nelson Hobart, Sr., Kansas City, Mo.	320.8	5	1,604
124	Harold Nelson Hobart, Jr., Hutchinson, Kans.	357.0	5	1,785
121	Gano H. Trehudy, Kansas City, Mo. Harold Nelson Hobart, Sr., Kansas City, Mo. Harold Nelson Hobart, Jr., Hutchinson, Kans.	300.0	5	[1] 1,500
	Total	1,305.4	.....	6,527

[1] Actual extension is $1,950; reduced to $1,923 so as not to exceed $5,000 per participant.

The staff has been advised by the Crowley County ASC office that the following nine individuals executed CRP contracts involving land purchased from Gano Properties:

Contract No.		Acres	Rate	Annual payment
98	Frank Gregory, Ordway, Colo.	647	$7.50	[1] $5,000.00
99	John Bauer, Sugar City, Colo.	140	7.50	1,050.00
102	Reuben Bauer, Sugar City, Colo.	661	7.50	4,957.50
103	Benjamin Bauer, Sugar City, Colo.	643	7.50	4,822.50
106	Earl Proctor, Sugar City, Colo.	667	7.50	[1] 5,000.00
109	Joe Bauer, Sugar City, Colo.	667	7.50	[1] 5,000.00
114	Nathan Schlegel, Rocky Ford, Colo.	554	7.50	4,155.00
115	Solomon J. Schlegel, Rocky Ford, Colo.	135	7.50	1,012.50
125	Gilbert Proctor, Springfield, Colo.	472	7.50	3,540.00
	Total	4,144	.....	34,537.50

[1] Actual extension exceeds $5,000, reduced to $5,000 limit.

The staff points out that land which was said to be valued at not more than $10 an acre and which the Crowley County ASC Committee felt should go into the CRP at a top price of $2 an acre was permitted to go into the program at rates of $5 and $7.50 an acre. A total of 7,619 acres of land formerly owned by Gano Properties went into CRP for $49,597.50 a year, or almost $500,000 for the 10-year period of the CRP contracts. At the $2 top rate suggested by Crowley County ASC Committee, all of the 11,620 acres of eligible cropland if put in the CRP would have cost $232,400 for the 10-year period.

D. SOUTH DAKOTA

Producers in South Dakota have placed 412,354 acres in the CRP, or approximately 66.5 percent of the goal of 620,000 acres which was originally established by the Soil Bank Division. For this participation they will receive annual payments in 1957 totaling $3,558,000, and it is estimated that they will earn practice payments totaling $3,206,000 during 1957.

State and county ASC officials advised that CRP participation in South Dakota was generally concentrated in the drought areas. In this regard it will be noted that, as of October 8, 1956, part or all of 35 counties of South Dakota were designated as disaster areas by the USDA.

The staff was informed by these officials that they knew of no attempts to circumvent the $5,000 maximum limitation through the establishment of trusts, partnerships, or sales of land. With respect to land speculation, officials advised that when the Soil Bank Act was first passed land values in some counties increased possibly $5 an acre. This increase was caused by land speculators from Oklahoma and Texas who came to South Dakota to purchase land. Much of the land these individuals attempted to purchase was occupied by a tenant. When they attempted to buy the land and break the tenant relationship, county committees, with the backing of the State office, refused to accept the land of the new owner in the soil bank if he could not show that he was a bona fide farmer. This brought the land boom to an abrupt stop.

The CRP rate for counties in South Dakota ranged from a minimum $6 rate to a maximum $12 rate. With respect to these rates, a real-estate broker in Huron, S. Dak., said they are out of line with land values and, therefore, discourage participation by any owner of good cropland. He explained that in the western part of South Dakota much of the land is marginal land worth about $25 an acre. If this land is placed in the CRP at the minimum rate of $6 an acre, it would require about 4 years to pay for the land through CRP payments. In the eastern part of the State cropland is worth $125 or more an acre and, if this land is placed in the CRP at the maximum rate of $12 an acre, it would require about 10 years to pay for the land through CRP payments. He said it would seem to be obvious that there is more incentive for the owner of marginal land to place it in the CRP than there is for the owner of good cropland.

The State ASC office, by memorandum dated March 18, 1957, advised the director, northwest area, CSS, in part:

As a result of complaints received regarding some of the established rental rates under the conservation-reserve program, especially in counties bordering on

North Dakota, the State committee has reappraised this situation very carefully and thoroughly. It now appears that the factor of restoring unneeded cropland in the western part of the State to permanent vegetative cover was not given sufficient weight when the rates were set up originally. To remedy this defect it is proposed that the rates for all counties presently having a rate of $6 be raised to $7 per acre.

By memorandum dated April 9, 1957, the Deputy Director for Production Adjustment denied the request of the South Dakota State ASC office that the minimum rate be increased to $7 and, in so doing, stated in part:

It would appear your State agricultural stabilization and conservation committee made an equitable determination of county rates for the conservation reserve program whereby the South Dakota State average of $9 per acre was distributed among the counties from a low of $6 to a high of $12.

We recognize that from some standpoints the spread between the farm characteristics in South Dakota counties exceeds the spread of 67 percent of the State average reflected by your rates. The $6 rates represent an upgrading in rates while the $12 rate represents some downgrading. For the counties assigned the $6 rate there is much more information available to substantiate a lower rate in relation to other South Dakota counties than there is to support a higher rate. A look at a few of these items makes the $6 rate seem quite high.

For a group of 6 representative counties assigned the $6 rate, the annual payment rate represented from 26.7 percent to 36.9 percent of the average value per acre as compared with the 6 counties assigned the $12 rate for which the annual payment rate amounted to 6.6 percent to 9.9 percent of the average value per acre.

The average value per acre of the 6 selected counties assigned the $6 rate ranged from a low of $16.27 to a high of $22.46 as compared with the average value per acre of the 6 counties assigned the $12 rate for which the lowest value per acre was $140.69 and the highest value per acre was $182.23.

Mr. Thomas E. Hamilton, Deputy Director, Soil Bank Division, advised that the land values quoted above were obtained from the 1954 agricultural census. He acknowledged that the 1954 land values seemed to indicate that the $6 rate may be too high and the $12 rate too low. However, he said these land values may be too low in some instances because they take into consideration, not only cropland, but grazing land and woodland. He said, however, that these land values were used in denying the request of the South Dakota ASC office because they represented the best available information on land values.

There is set out below a table showing the 14 counties receiving the $6 minimum rate that the State office proposed be raised to $7. This table shows the average land value per acre and the number of years that it would take to pay for this land at the CRP rate.

County	Average land value per acre (1954)	Number of years to pay at Conservation-reserve program rate	County	Average land value per acre (1954)	Number of years to pay at Conservation-reserve program rate
Butte	$17.78	2.6	Jackson	16.27	2.7
Corson	16.86	2.8	Jones	20.22	2.4
Custer	16.67	2.8	Meade	15.10	2.3
Dewey	13.45	2.6	Pennington	22.46	2.7
Fall River	18.67	2.6	Perkins	17.37	2.9
Haakon	16.85	2.6	Stanley	18.10	2.9
Harding	13.60	2.2	Ziebach	13.65	2.1

Mr. Kenneth E. Valentine, Program Analysis Branch, Soil Bank Division, advised that statistics by counties showing the percentage of total cropland placed in the CRP indicate that participation in the above 14 counties was relatively small and that the greatest participation was in Brown County and Marshall County, which had a $9 and $10 rate, respectively. He said this may indicate that the $6 rate is not as favorable as it might appear.

An analysis of participation by the 14 counties having a $6 rate indicates that they placed a total of 49,794 acres in the CRP which is approximately 1.7 percent of the total cropland of these counties. While this participation appears to be small, it is significant that 9 counties in the southeastern part of the State, which had a CRP rate ranging from $10 to $12 per acre, placed 13,799 acres in the CRP, or approximately 0.5 percent of their total cropland. Land values in these 9 counties ranged from $74.44 in Douglas County, to a high of $174.75 in Union County. Predicated on these values, it would require 7.4 years for CRP payments to pay for land in Douglas County and 14.6 years in Union County.

While Brown and Marshall Counties had the largest participation, totaling 66,990 acres or approximately 5.6 percent of their total cropland, land in Brown County could be paid for within 5.6 years at its CRP rate of $9 an acre, whereas land in Marshall County could be paid for within 3.7 years at its $10 CRP rate.

The significance of the percentages of total cropland placed in the CRP is indicated by the fact that, on a national basis, 1.5 percent of total cropland was placed in the CRP.

B. MISSISSIPPI

Producers in Mississippi have placed 48,970 acres in the CRP, or approximately 13.8 percent of the goal of 355,000 acres which was originally established by the Soil Bank Division. For this participation they will receive annual payments in 1957 totaling $486,000, and it is estimated that they will earn practice payments totaling $561,000 during 1957. Officials attributed the relatively light CRP participation to the fact that land values, as compared to CRP rates, are relatively high in Mississippi.

State and county ASC officials said they knew of only 5 CRP contracts which approximated the $5,000 maximum limitation. These officials said that no instances had come to their attention of any trust or partnership being formed to circumvent the $5,000 limitation.

County ASC officials of Sunflower and Washington Counties, two of the counties wherein participation was heaviest, advised that farmers participated for several reasons, among which were:

1. They had surplus land for which there was no other use.
2. Soybeans are normally grown on this type of land, but for the past several years the crops have been poor.
3. Some farmers are taking advantage of the CRP to change from crop production to production of livestock.
4. Some small farmers have placed their land in the soil bank and have obtained other employment.

State and county ASC officials advised this staff that they knew of no land speculation in the State as a result of either the ARP or the

CRP. They said that the eligible land was generally too expensive, as compared with the soil-bank rates, to attract land speculators.

State ASC officials advised this staff that, in order to set CRP rates, county offices were circularized to determine the cash value of the land and the prevailing cash rental rates for land. The State officials advised that the result obtained was practically worthless, because cropland is not sold by itself. When a farm is sold, it is usually sold in its entirety and includes pasture, woodland, wasteland, cropland, and improvements. Rental rates varied widely and depended upon whether the land had a cotton allotment or was used for the production of some nonallotted crop or was pastureland used for grazing.

County ASC personnel also pointed out the difficulty of fixing land values because generally the best land was not for sale. However, estimates and information with respect to recent actual sales were obtained from county ASC officials. The following is a summary of such information:

ESTIMATES

County	Cropland value	Comments	Conservation-reserve program payment
Calhoun	$100 to $135	Good cropland	$9.9
Yalobusha	$90 to $125	do	9.9
Panola	$100 to $200	do	10.9
Bolivar	$150 to $350	Average cropland	11.9
Coahoma	$175	Minimum cropland	11.9
	$400	Very good cropland	
Quitman	$100 to $200	Average open land	11.9
Sunflower	$200 up	Average to better	11.9
Tunica	$100 to $300	do	11.9
Washington	$250 to $300	Average cottonland	11.9
	$100 to $130	Average riceland	
	$75 to $110	Lower price land	

ACTUAL RECENT SALES

Calhoun	$75 to $150	Cropland	$9.9
Grenada	$100	Good farm	9.9
	$15	Poor hill farm	
Quitman	$144	Average farm	11.9
	$400	Good farm	
Tallahatchie	$260 to $300	Very good farms	11.9
	$50	Hill section	10.9
Washington	$266	Good farm	11.9

With regard to land sales, officials of the Calhoun County ASC office advised that John Covington, Jr., Marks, Miss., recently purchased a 1,750-acre farm for a reputed price of approximately $175,000. The soil-bank base for this farm is 1,272.5 acres, which includes a cotton allotment of 301.2 acres.

On March 12, 1957, Mr. Covington signed CRP contract No. 6–57–61 placing 526.3 acres in the CRP for a period of 5 years. Under this contract Mr. Covington will receive $9.50 an acre, or a total of $4,999.85, for each of the 5 years. On the same date Mr. Covington signed ARP contract No. 6, placing 190.3 acres in the cotton ARP program, for which he will receive $14,653.10 during 1957.

It will be observed that Mr. Covington will receive a total of $19,652.95 in 1957, which will enable him to recover approximately 11.2 percent of his investment in 1 year. In addition, Mr. Covington will

be permitted to harvest 110.9 acres of cotton during 1957, and 445 acres of other soil-bank base crops.

F. ARKANSAS

Producers in Arkansas have placed 61,526 acres in the CRP, or approximately 14 percent of the goal of 435,000 acres which was established by the Soil Bank Division. For this participation they will receive annual payments in 1957 of $497,000, and it is estimated they will earn practice payments totaling $701,000 during 1957.

State and county ASC officials attributed the light CRP participation to the fact that land values, as compared to CRP rates, are relatively high in Arkansas. Because of the high land values, neither the CRP nor the ARP has caused any land speculation in Arkansas. They advised further that they knew of only one CRP contract for the $5,000 maximum limitation.

State officials advised that it would be very difficult to estimate the value of the land that has been placed in the CRP as each farm will have its own value depending on land use, allotments for crops, buildings, location, and access to irrigation water.

Officials stated that in setting CRP rates they were guided by the land values established by the 1954 Bureau of the Census agricultural survey and by productivity figures compiled by the Agricultural Marketing Service. Predicated upon this information, CRP rates ranging from $7 to $11 per acre were established.

County ASC officials furnished the staff with the following estimates of the value of land within their respective counties:

County	Cropland value per acre	Comments	Conservation-reserve program payment rate
Arkansas	$140, riceland	Actual sale of good land	$10
	$100 to $125, riceland	Average land	
Jackson	$100, riceland	Minimum value per acre	10
Desha	$200, cottonland	Good river bottom land	11
	$100	Other cropland	
Mississippi	$600	Very few sales	11

During the staff's review of CRP contracts, it was noted that on March 6, 1957, the city water and light plant, of Jonesboro, Ark., signed CRP contract No. 37 placing in the CRP 180.2 acres at the diversion rate and 473 acres at the nondiversion rate for a 5-year period for an annual payment of $3,543.10.

The staff was advised by officials of the city water and light plant that it owns approximately 920 acres of land on which there are no allotments. For the past several years this land has been leased on a cash rental basis for $2,000. The last lease, however, was canceled because the lessee failed to pay the rent. In 1956 an unsuccessful attempt was again made to rent this land, and thereafter it was decided to place the land in the CRP.

Comments of United States Department of Agriculture on a Report to the Committee on Appropriations, House of Representatives on the 1957 Soil-Bank Programs

The Department of Agriculture has reviewed the above report dated February 1958. The report relates to some administrative problems which the investigative staff of the House Committee on Appropriations encountered in its investigation of 1957 soil-bank programs. In conjunction with our own continued studies of the soil-bank programs this report should aid us in further improving operations to better achieve the purposes of the Soil Bank Act.

Because the President has recommended to the Congress that the acreage-reserve program of the soil bank be terminated with the conclusion of the 1958 program, we will not attempt to discuss the comments on that program in detail. Part I of the report covers the 1957 acreage-reserve program. We shall indicate some possible adjustments or solutions to major points raised in part II on the conservation-reserve program.

PART I. ACREAGE-RESERVE PROGRAM

The 1957 acreage-reserve program followed so soon after the late-started 1956 acreage-reserve program that only limited time was provided in which to gain necessary operating experience to establish a smooth running program. It is largely axiomatic that a very great amount of effort and considerable time and experience is requisite to the formulation, development and efficient establishment of a program of the scope of the soil bank. To instruct personnel in approximately 3,000 agricultural stabilization and conservation county offices as to the operation and functioning of even 1 program of the magnitude of the acreage-reserve program—even though already formulated and developed—is in itself a major accomplishment. The fact that it was necessary to formulate and develop regulations, prepare and issue operating instructions, numerous contract and other forms on an almost continuous emergency basis for 3 crop years has undoubtedly been responsible for some of the difficulties pointed up in this report on the 1957 programs.

With the changes placed into effect on the 1958 program due to the greater experience gained after a little more than a year's operation of the soil bank, we feel that this year's program will accomplish, within funds-and-payments limitations, the intent of the legislation. During the remainder of the time in which the acreage-reserve program will be functioning, this Department will attempt to use fully the worthwhile suggestions and pointers contained in the report to increase the effectiveness of the program.

The inclusion of the principle of the soil-bank base acreage—a device to restrict the production of unneeded crops—in the 1958 acreage-reserve program, has, in conjunction with the use of this device with the conservation-reserve program, brought about an even greater degree of stability in our crop-production patterns. This and other changes and amendments acknowledged in the report will make for better administration during the remainder of the life of the acreage-reserve program.

The following facts indicate the accomplishments under the 1957 acreage-reserve program:

(*a*) A total of approximately 21.4 million acres of cropland suitable for growing basic crops were placed in the 1957 acreage reserve. This was comprised of: wheat, 12.8 million acres; corn, 5.2 million acres; upland cotton, 3 million acres; rice, 242,000 acres; and all tobacco, nearly 80,000 acres.

(*b*) Because of the acreage-reserve program we produced in 1957 about 175 million bushels less wheat, 225 million bushels less corn, 2 million bales fewer of cotton, 6 million hundredweight less rice, and 93 million pounds less tobacco than probably would have been produced had there been no acreage reserve.

(*c*) A total of more than 914,000 agreements were signed under the 1957 acreage-reserve program. Of these, wheat totaled 233,000; corn, 324,000; upland cotton, 301,000; rice, 4,825; all tobacco, approximately 52,000.

(*d*) Funds obligated to producers who signed 1957 acreage-reserve agreements totaled approximately $613.8 million. These funds were obligated by commodities as follows: Wheat, approximately $230.9 million; corn, $196.4 million; upland cotton, $153.3 million; rice, $15.5 million; all tobacco, $17.8 million.

The initial response under the 1958 acreage-reserve program was so enthusiastic that it became necessary to rigidly allocate funds to commodities and States. Through January 31, 1958, the third week of the signup period, farmers had filed approximately 610,000 applications with their agricultural stabilization and conservation county offices covering about 10.9 million acres of cropland for which more than $425 million would be required to meet the obligation to such producers if all were accepted. With 3 weeks remaining in the signup period for cotton, corn, and spring wheat, and 5 weeks for rice and tobacco, it seems likely that there will be a substantial oversubscription above the $500 million appropriated for the 1958 acreage-reserve program.

PART II. CONSERVATION-RESERVE PROGRAM

President Eisenhower's recommendations relative to agriculture referred to the Committee on Agriculture on January 16, 1958 stated in part:

> We should now shift the emphasis of the soil bank away from the short-term acreage reserve, aimed at reducing surpluses of particular crops, to the long-term conservation reserve, aimed at overall production adjustment. This change will aid all farmers, especially the low-income farmer, who will, if he desires, be better able to retire his entire farm from production.

The conservation-reserve program is a long-range program under which farmers may sign contracts voluntarily to divert general cropland from the production of crops to soil and water conservation uses, tree planting, and wildlife protection for periods of 3, 5, or 10 years. Contracts under it may be entered into for 1 year more than under the acreage-reserve program, as authorized, i. e., through 1960. The Department's approach toward the development and operation of this longer term program has been both conservative and experimental in attempting to find operating bases that would accomplish the full intent of the legislation.

The broad administrative and educational problems involved in the launching of the acreage-reserve program have been in several respects even greater with the conservation-reserve program largely because of its long-term character. Not only have the administrative agencies within the Department continuously studied and analyzed the administrative and operational factors of the program, but in addition, research agencies of the Department and of several State universities have also been studying them looking toward further improvement.

Once it is understood by farmers that the objectives of the conservation-reserve program is to encourage, through economic incentives, the reduction in the production of agricultural commodities surplus to our requirements as well as to conserve our natural resources—soil, water, and wildlife—for future use as needed, participation in the program should be greatly increased. As stated in the committee's report, some principal reasons for nonparticipation in the conservation-reserve program have been: (1) High land values in relation to the conservation-reserve program payment rates; (2) farmers' reluctance to sign long-term contracts, the results of which are difficult in many cases to foresee; and (3) the necessity of complying with all allotments and the soil bank base acreage for the farm.

The educational features of the program have been aimed at explaining the objectives of the program in order that those farmers who might be able and willing to participate would be given sufficient understanding of the program to arrive at decisions to participate. The economic pressures endured by farmers in areas subject to prolonged periods of drought would tend logically to encourage broader participation of such farmers in such areas. This is borne out by the fact that the areas which had suffered from drought for several years in Texas, New Mexico, and Colorado accounted for relatively large participation in the conservation-reserve program.

Experience shows that some minor adjustments authorized under the present legislation were needed to make the program equally effective in all parts of the country. Consequently persons having difficulty in agriculture, usually associated with a combination of factors such as marginal land, hazardous cropping conditions, uneconomic size of operation, old age or labor shortage, will be able through the economic aid furnished by the conservation-reserve program to relocate or establish themselves in some other satisfactory endeavor. The fact that nearly one-fifth of the participation obtained to date involves the retirement of whole farm units is evidence of this fact.

Any judgment of the several cases cited in the report wherein attempts may have been made to evade the $5,000 maximum-payment limitation through division of title and establishment of trusts should be made in light of the following fundamental factors:

(1) The regulations now require that—

> • • • a farm as to which the ownership has changed shall not be eligible to be placed in the conservation reserve during the first 12 months of the new ownership unless the county committee determines that the farm would continue to be farmed by the new owner in the absence of the soil-bank program.

(2) The primary purpose of the conservation-reserve program is to take cropland out of production. Hence, overall, the more crop-

land placed in the conservation reserve the greater the accomplishment of this program objective.

(3) The conservation-reserve program contains no provision to prohibit the transfer of title to land. Refund of conservation-reserve program payments are required in some cases of land sales to protect the interest of the Government.

(4) The definition of a family trust has been expanded. This definition now states that such a trust would be considered to be a scheme or device to evade the $5,000 maximum annual payment limitation if it results in the settlor and beneficiaries of the trust receiving in the aggregate annual payments for any year in excess of $5,000 for all land placed in the Conservation Reserve. This expanded definition states further that—

> For purposes of this provision, members of a family include husband or wife of a settlor, children of the settlor, their husbands and wives, grandchildren of the settlor, stepchildren of a child of the settlor, and any minor related to the settlor by blood or marriage, and members of the immediate household of the settlor; and payments to a trustee shall be regarded as payments to the beneficiaries of the trust.

(5) The regulations also now provide that no producer shall break out any land not classified as cropland at the time a conservation-reserve program contract was entered into unless the breaking out of such land is approved by the county committee as a good farming practice and an equal acreage of cropland on the farm exclusive of the acreage and conservation reserves is retired to noncrop use. Hence no new land can be brought into production without the approval of the county committee.

In reviewing State and county payment rates for the conservation-reserve program the Department gave careful consideration to land values and to the data available on cash rentals for land. However, we have been unable to obtain many data of a homogeneous or representative character on cash rentals at State and county levels. Authority has been given to county agricultural stabilization and conservation committees to adjust individual farm annual payment rates downward from the average payment rate established for a county or area where it is determined in their judgment that the productivity, cash value, or rental rate for such farm is less than the average for the county.

These steps and others have been aimed at meeting the provisions of the Soil Bank Act to provide the incentives necessary to obtain contracts covering sufficient acreage for the substantial accomplishment of the purposes of the program. The establishment of economic payment rates and the overall administration of the program at Federal, State, and county levels have held alleged land speculative activities under this program to a minimum. Some methods used were as stated in the committee report for South Dakota, wherein the action of the State committee "brought the land boom to an abrupt stop." Thus, reported land speculative activities generally were more "shadow than substance."

In those instances where so-called surplus land for which there was no other use was placed in the conservation reserve, it should be borne in mind that land to be eligible must have been regularly used in the production of crops on the farm. This includes cropland devoted to

such crops as tame hay, alfalfa, and clovers which do not require annual tillage.

Now that farmers have had a fuller opportunity to evaluate the impact and effect of the long-term contracts required to accomplish the purposes of the conservation-reserve program they are likely to participate to a much greater extent than in previous programs. However, the amount of funds made available annually by the Congress will govern to a large degree the amount of such participation.

The activities required to convert cropland to conservation uses and to bring about a satisfactory balance between supply and demand for agricultural commodities and still allow full production on the land best suited and most efficiently managed can be substantially obtained through this new program approach. The continuation of production which cannot be efficiently obtained at a reasonable return to the farmer for both his capital and labor will only continue the depressed conditions of United States agriculture. Without such assistance the needed adjustment will only be prolonged and contribute to unnecessary wasteful deterioration of our basic resources.

It is our intention to continue to administer the soil bank as efficiently as possible to accomplish the objectives and purposes set forth in the act. We shall welcome suggestions for further improvements in program operations.

CERTIFICATE OF SERVICE

I, Lynell G. Skarda, one of the attorneys for the Petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 5th day of March, 1974, I served copies of the Petition for Writ of Certiorari on the several parties thereto, as follows:

1. On The Solicitor General, Department of Justice, Washington, D.C., 20530, by mailing three (3) copies in a duly addressed envelope, with airmail postage prepaid.

2. On Robert E. Kopp and Michael H. Stein, Appellate Section, Civil Division, U. S. Department of Justice, Washington, D.C., 20530, by mailing three (3) copies in a duly addressed envelope, with airmail postage prepaid.

LYNELL G. SKARDA

FILED
MAR 8 1974
MICHAEL RODAK, JR., CLERK

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1973

NO. 73-1361

FRED BALDRIDGE, TRAVIS W. TAYLOR and HERMAN D. TERRY,

Petitioners,

vs.

JOHN R. HADLEY, J. D. MONTOYA and ED GARY, individually and as members of THE NEW MEXICO STATE AGRICULTURAL STABILIZATION and CONSERVATION COMMITTEE; and CLIFFORD M. HARDIN as Secretary of Agriculture of the United States, COMMODITY CREDIT CORPORATION,

Respondents,

and

UNITED STATES OF AMERICA,

Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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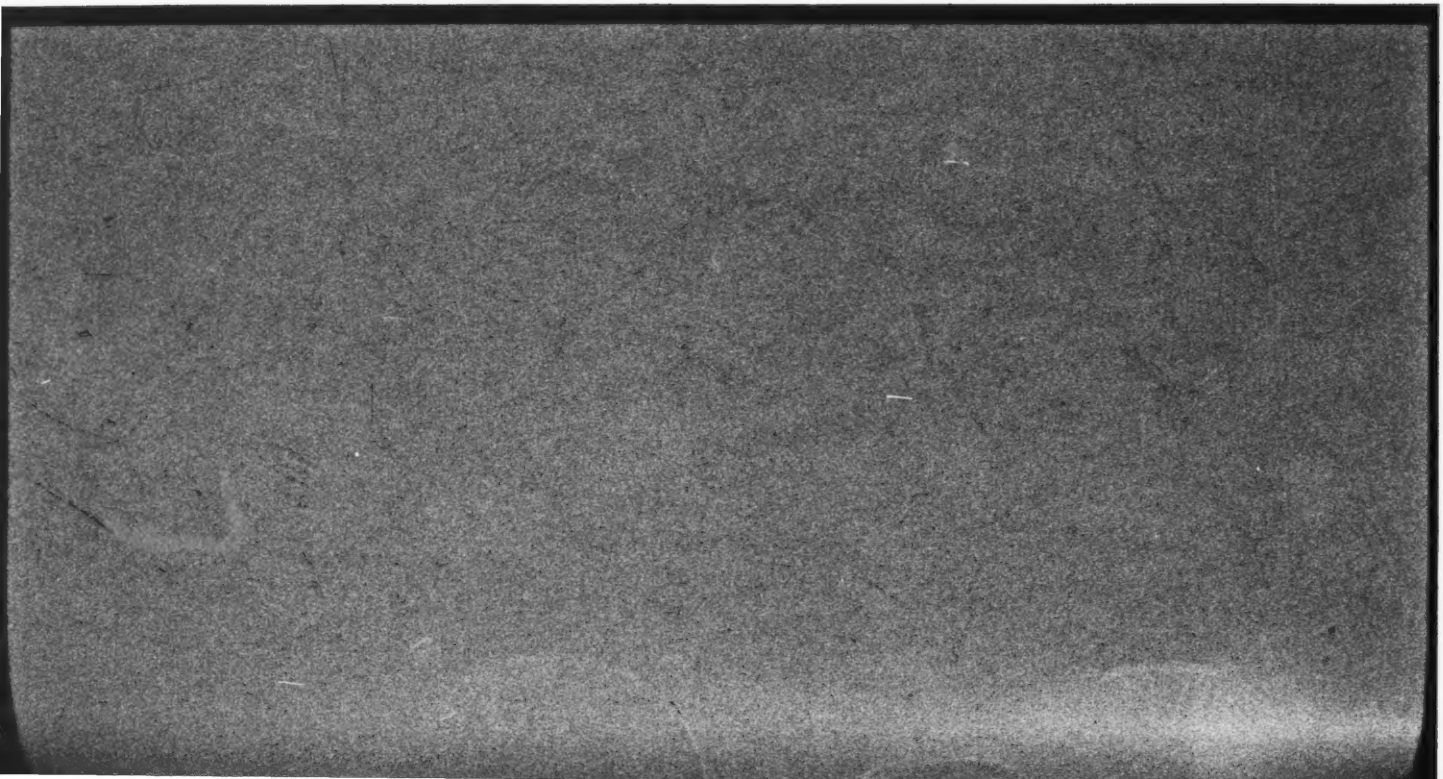

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APPELLANT'S BRIEF

SOIL BANK PROGRAM STATUTES

7 U.S.C.A. § 1801. Declaration of Policy

The Congress finds that the production of excessive supplies of agricultural commodities depresses the prices and income of farm families; constitutes improper land use and brings about soil erosion, depletion of soil fertility, and too rapid release of water from lands where it falls, thereby adversely affecting the national welfare, impairing the productive facilities necessary for a continuous and stable supply of agricultural commodities, and endangering an adequate supply of water for agricultural and nonagricultural use; overtaxes the facilities of interstate and foreign transportation; congests terminal markets and handling and processing centers in the flow of commodities from producers to consumers; depresses prices in interstate and foreign commerce; disrupts the orderly marketing of commodities in such commerce; and otherwise affects, burdens, and obstructs interstate and foreign commerce. It is in the interest of the general welfare that the soil and water resources of the Nation be not wasted and depleted in the production of such burdensome surpluses and that interstate and foreign commerce in agricultural commodities be protected

from excessive supplies. It is declared to be the policy of the Congress and the purposes of this chapter to protect and increase farm income, to protect the national soil water and forest and wildlife resources from waste and depletion, to protect interstate and foreign commerce from the burden and obstructions which result from the utilization of farmland for the production of excessive supplies of agricultural commodities, and to provide for the conservation of such resources and an adequate, balanced, and orderly flow of such agricultural commodities in interstate and foreign commerce. To effectuate the policy of Congress and the purposes of this chapter programs are herein authorized to assist farmers to divert a portion of their cropland from the production of excessive supplies of agricultural commodities, and to carry out a program of soil, water, forest and wildlife conservation. The activities authorized under this chapter are supplementary to the acreage allotments and marketing quotas authorized under the Agricultural Adjustment Act of 1938, as amended, and together with such acreage allotments and marketing quotas, constitute an overall program to prevent excessive supplies of agricultural commodities from burdening and obstructing interstate and foreign commerce. May 28, 1956, c. 327, Title I, § 102, 70 Stat. 188.

7 U.S.C.A. § 1804. Certificate of Claimant

Subject to the provisions of section 1823(b) of this title, payment or compensation authorized by this chapter may be made upon the certificate of the claimant, in such form as the Secretary may prescribe, that he has complied with all requirements for such payment and that the statements and information contained in the application for payment are correct and true, to the best of his knowledge and belief. May 28, 1956, c. 327, Title I, § 116, 70 Stat. 196.

7 U.S.C.A. § 1805. Utilization of Local and State Committees

In administering this chapter in the continental United States, the Secretary shall utilize the services of local, county, and State committees established under section 590h of Title 16. May 28, 1956, c. 327, Title I, § 117, 70 Stat. 196.

7 U.S.C.A. § 1808. Utilization of Facilities, Services, Authorities and Funds of Commodity Credit Corporation; Report To Congress; Appropriations; Transfer of Funds

(a) The Secretary is authorized to utilize the facilities, services, authorities, and funds of the Commodity Credit Corporation in discharging his

functions and responsibilities under this chapter, including payment of costs of administration for the programs authorized under this chapter: Provided, That the Secretary shall, prior to February 1, 1957, or such earlier date as may be practicable, submit to the Congress a full program of all operations under this chapter which will require the making of expenditures during the fiscal year ending June 30, 1958; and, after June 30, 1957, the Commodity Credit Corporation shall not make any expenditures for carrying out the purposes of this chapter unless the Corporation has received funds to cover such expenditures from appropriations made to carry out the purposes of this chapter. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this chapter, including such amounts as may be required to make payments to the Corporation for its actual costs incurred or to be incurred under this section.

(b) All funds available for carrying out the purposes of this chapter shall be available for transfer to such agencies of the Federal or State governments as the Secretary may request to cooperate or assist in carrying out this chapter; and for technical assistance in formulating and carrying out the programs authorized by this chapter. The Secretary may make such payments in advance of determination of performance. May 28, 1956, c. 327, Title I, § 120, 70 Stat. 197.

7 U.S.C.A. § 1811. Penalty for Grazing or Harvesting

Any producer who knowingly and willfully grazes or harvests any crop from any acreage in violation of a contract entered into under section 1821 or 1831 of this title shall be subject to a civil penalty equal to 50 per centum of the compensation payable for compliance with such contract for the year in which the violation occurs. Such penalty shall be in addition to any amounts required to be forfeited or refunded under the provisions of such contract, and shall be recoverable in a civil suit brought in the name of the United States. May 28, 1956, c. 327, Title I, § 123, Stat. 198.

7 U.S.C.A. § 1812. Regulations

The Secretary shall prescribe such regulations as he determines necessary to carry out the provisions of this chapter. May 28, 1956, c. 327, Title I, § 124, 70 Stat. 198.

7 U.S.C.A. § 1814. Pooling of Conservation Reserve Land

Whenever management of family farms or optimum land use will be aided, the Secretary of Agriculture is authorized to permit farmers to pool their rights to participate jointly in the conservation reserve program on property other than their home farms. May 28, 1956, c. 327, Title I, § 126, 70 Stat. 198.

7 U.S.C.A. § 1816. Compensation for Incorrect Information Furnished under Acreage Reserve or Conservation Reserve Program

Notwithstanding any other provision of law, the Secretary may, to the extent he deems it desirable in order to provide fair and equitable treatment, pay a producer compensation under the acreage reserve or conservation reserve program which he otherwise would not be entitled to receive because the contract, application therefor, action, or conduct of the producer is --

(1) not in conformity with the provisions of the program, or

(2) less favorable to the producer than would have been the case if it had been based on correct information, or

(3) based on an understanding that payment would be forthcoming in an amount in excess of that permitted by the program

if it is established to the satisfaction of the Secretary that the contract, application, action, or conduct of the producer was the result of relying in good faith on the erroneous approval of such contract, application, action or conduct by, or on the erroneous advice, determination, or computation of, an authorized representative of the Secretary. No contract heretofore or

hereafter entered into shall be modified, invalidated, or changed because of the marriage of any two contracting parties. May 28, 1956, c. 327, Title I, § 128, as added Sept. 14, 1956, Pub.L. 86-265, 73 Stat. 552.

7 U.S.C.A. § 1831. Terms and Conditions -- Producers' Contracts

(a) To effectuate the purposes of this chapter the Secretary is authorized to enter into contracts for periods of not less than three years with producers determined by him to have control for the contract period of the farms covered by the contract wherein the producer shall agree:

(1) To establish and maintain for the contract period protective vegetative cover (including but not limited to grass and trees), water storage facilities, or other soil-, water-, wildlife-, or forest-conserving uses on a specifically designated acreage of land on the farm regularly used in the production of crops (including crops, such as tame hay, alfalfa, and clovers, which do not require annual tillage).

(2) To devote to conserving crops or uses, or allow to remain idle, throughout the contract period an acreage of the remaining land on the farm which is not less than the acreage normally devoted only to conserving crops or uses or normally allowed to remain idle on such remaining acreage.

(3) Not to harvest any crop from the acreage established in protective vegetative cover, excepting timber (in accordance with sound forestry management) and wildlife or other natural products of such acreage which do not increase supplies of feed for domestic animals, and except that the Secretary may, with the approval of the contract signers, permit hay to be removed from such acreage if the Secretary, after certification by the Governor of the State in which such acreage is situated of the need for removal of hay from such acreage, determines that it is necessary to permit removal of hay from such acreage in order to alleviate damage, hardship, or suffering caused by severe drought, flood, or other natural disaster.

(4) Not to graze any acreage established in protective vegetative cover prior to January 1, 1959, or such later date as may be provided in the contract, except pursuant to the provisions of section 1821(a) (3) of this title; and if such acreage is grazed at the end of such period, to graze such acreage during the remainder of the period covered by the contract in accordance with sound pasture management.

(5) Not to adopt any practice, or divert lands on the farm from conservation, woods, grazing, or other use, to any use specified by the Secretary in the contract as a practice or use which would tend to defeat the purposes of the contract.

(6) (A) In the event that the Secretary determines that there has been a violation of the contract (including the prohibition of grazing on conservation acreages) at any stage during the time such producer has control of the farm and that such violation is of such a substantial nature as to warrant termination of the contract, to forfeit all rights to payments or grants under the contract, and to refund to the United States all payments and grants received by him thereunder.

(B) In the event that the Secretary determines that there has been a violation of the contract but that such violation is of such a nature as not to warrant termination of the contract, to accept such payment adjustments, forfeit such benefits, and make such refunds to the United States of payments and benefits received by him, under the contract, as the Secretary may determine to be appropriate.

(7) To such additional provisions as the Secretary determines are desirable and includes in the contract to effectuate the purposes of conservation reserve program, including provisions relating to control of noxious weeds.

Agreement by Secretary

(b) In return for such agreement by the producer the Secretary shall agree:

(1) To bear such part of the cost (including labor) of establishing and maintaining vegetative cover or water storage facilities, or other soil-, water-, wildlife-, or forest-conserving uses, on the designated acreage as the Secretary determines to be necessary to effectuate the purposes of this chapter, but not to exceed a maximum amount per acre or facility prescribed by the Secretary for the county or area in which the farm is situated; and

(2) To make an annual payment to the producer for the term of the contract upon determination that he has fulfilled the provisions of the contract entitling him to such payment. The rate or rates of the annual payment to be provided for in the contracts shall be established on such basis as the Secretary determines will provide producers with a fair and reasonable annual return on the land established in protective vegetative cover or water storage facilities, or other soil-, water-, wildlife-, or forest-conserving uses, taking into consideration the value of the land for the production of commodities customarily grown on such kind of land in the county or area, the prevailing rates for cash rentals for similar land in the county or area, the incentive necessary to obtain contracts covering sufficient acreage for the substantial accomplishment of the purposes of the conservation reserve program, and such other factors as he deems appropriate. Such rate or

rates may be determined on an individual farm basis, a county or area basis, or such other basis as the Secretary determines will facilitate the practical administration of the program.

Determination of Lands; Advertising and Bids

(c) In determining the lands in any area to be covered by contracts entered into under this section, the Secretary may use advertising and bid procedure if he determines that such action will contribute to the effective and equitable administration of the conservation reserve program.

Termination of Contract; Notice by State Committee; Hearings; Written Notice of Committee's Determination; Judicial Review

(d) A contract shall not be terminated under paragraph (6) of subsection (a) of this section unless the nature of the violation is such as to defeat or substantially impair the purposes of the contract. Whenever the State committee believes that there has been a violation which would warrant termination of a contract, the producer shall be given written notice thereof by registered mail or certified mail or personal service, and the producer shall, if he requests such an opportunity within thirty days after the delivery or service of such notice, be given an opportunity to show cause, in an informal proceeding

before the county committee under regulations promulgated by the Secretary, why the contract should not be terminated. If the producer does not request an opportunity to show cause why the contract should not be terminated within such thirty-day period, the determination of the State committee made in accordance with regulations of the Secretary shall be final and conclusive. If the producer within such thirty-day period requests an opportunity to show cause why the contract should not be terminated, the county committee, at the conclusion of the proceeding, shall submit a report, including its recommendations, to the State committee for a determination, on the basis of such report and such other information as is available to the State committee, as to whether there has been a violation which would warrant termination of the contract. The producer shall be accorded the right, in accordance with regulations promulgated by the Secretary, to appear before the State committee in connection with the State committee's determination of the issue. The producer shall be given written notice by registered mail or certified mail or personal service of the State committee's determination. If the producer feels aggrieved by such determination, he may obtain judicial review of such determination by filing a complaint with the United States district court for the district in which the land covered by the contract is located, within ninety days after the delivery or service of

notice of such determination, requesting the court to set aside such determination. Service of process in such action shall be made in accordance with the rule for service of process upon the United States prescribed by the Rules of Civil Procedure for the United States District Courts. The copy of the summons and complaint required to be delivered to the officer or agency whose order is being attacked shall be sent to the chairman of the State committee. The action in the United States district court shall be a trial de novo to determine whether there has been a violation which would warrant termination of the contract. If the producer does not seek judicial review of the State committee's determination within the ninety-day period allowed therefor, the State committee's determination shall be final and conclusive. The terms "county committee" and "State committee" as used herein refer to the county and State committees established under section 590h of Title 16. May 28, 1956, c. 327, Title I, § 107, 70 Stat. 191; June 11, 1960, Pub.L. 86-507, § 1(8), 74 Stat. 200; June 29, 1961, Pub.L. 89-62. § 1(a), 75 Stat. 129; July 3, 1962, Pub.L. 87-521, 76 Stat. 135.

7 U.S.C.A. § 1831a. Contract Restrictions

On and after June 13, 1958 no conservation reserve contract shall be entered into which provides for (1) payments for conservation practices in

excess of the average rate for comparable practices under the Agricultural Conservation Program, or (2) annual rental payments in excess of 20 per cent of the value of the land placed under contract, such value to be determined without regard to physical improvements thereon or geographic location thereof. In determining the value of the land for this purpose, the county committee shall take into consideration the estimate of the landowner or operator as to the value of such land as well as his certificate as to the production history and productivity of such land. Pub.L. 85-459, Title I, § 101, June 13, 1958, 72 Stat. 195.

7 U.S.C.A. § 1832. Conservation Reserve Goal -- Determination

(a) The Secretary shall not later than February 1 of each year determine and announce the national conservation reserve goal for such year. Such goal shall be that percentage which the Secretary determines it is practicable to cover by contracts during such year of the number of acres, if any, by which (1) the acreage used for the production of agricultural commodities during the year preceding the year for which such determination is made, plus any acreage then in the acreage or conservation reserve program or retired from production as a result of acreage allotments or marketing quotas, exceeds (2) the acreage needed during the year for which such determination is made for the

production of agricultural commodities for domestic consumption and export and an adequate allowance for carryover. As soon as practicable after May 28, 1956 the Secretary shall determine the national conservation acreage goal for 1956.

(b) In distributing the national acreage goal among the various States and major crop production regions, the Secretary shall give due regard to the respective needs of the various States and regions for flood control, drought control, and other conservation benefits; the desires of producers in particular States or regions to participate in the conservation program; the diversion of acreage from crops under acreage allotments or marketing quotas; and the need to assure adequate production of agricultural commodities and products not in surplus and to discourage the production of agricultural commodities and products in surplus.

Report to Congress

(c) The Secretary shall transmit to the Congress on or before March 15 of each year a report of the scope of the conservation reserve program for the preceding year and the basis for participation in such program in the various States and major crop production regions of the country. May 28, 1956, c. 327, Title I, § 108, 70 Stat. 194.

7 U.S.C.A. § 1833. Authorized Period of Contracts and Expenditures

(a) The Secretary is authorized to formulate and announce programs under this subchapter and to enter into contracts thereunder with producers during the five-year period 19561960 to be carried out during the period ending not later than December 31, 1969, except that contracts for the establishment of tree cover may continue until December 31, 1974.

(b) The period covered by any contract shall not exceed ten years, except that contracts for the establishment of tree cover may extend for 15 years.

(c) In carrying out the conservation reserve program, the Secretary shall not enter into contracts with producers which would require payments to producers, including the cost of materials and services, in excess of $450,000,000 in any calendar year. May 28, 1956, c. 327, Title I, § 109, 70 Stat. 194.

7 U.S.C.A. § 1834. Termination and Modification of Contracts

(a) The Secretary may terminate any contract with a producer by mutual agreement with the producer if the Secretary determines that such termination would be in the public interest.

(b) The Secretary may agree to such modification of contracts previously entered into as he may determine to be desirable to carry out the purposes of this chapter and to facilitate the practical administration of the conservation reserve program. May 28, 1956, c. 327, Title I, § 110, 70 Stat. 194.

APPENDIX B

CONSERVATION RESERVE PROGRAM
AS AMENDED AND SUPPLEMENTED
THROUGH MARCH 3, 1960

PART 750 -- SOIL BANK

SUBPART--CONSERVATION RESERVE PROGRAM FOR 1956 THROUGH 1959 --* 3d/

--The regulations in this subpart govern the conservation reserve part of the Soil Bank Program for contracts which include only land for which the first year of the contract prior is 1956, 1958, 1958, or 1959. -- 3d/

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750.150	Definitions.	B-1
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*-750.153a.	Farms under new ownership. 1/	B-12
*--750.155a.	State and county allocations of 1959 program authorization. 3c/	B-13

1/ Sec. 750.153a was added in 22 F.R. 9641, Dec. 3, 1957.

3c/ Sec. 750.155a was added in 23 F.R. 9656, Dec. 13, 1958.

3d/ Title changed and material between asterisks substituted for the following in 24 F.R. 8667, October 27, 1959:

"The regulations in this subpart govern the conservation reserve part of the Soil Bank Program."

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750.157	Designation and use of conservation reserve.	B-23
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750.178	Finality of determinations.	B-70
*--750.188	Provision for handling exceptional cases. 7d/	B-70

Authority: §§750.150 to 750.188 issued under sec. 124, 70 Stat. 198 Interpret or apply secs. 127, 72 Stat. 118; sec. 128, 73 Stat. 552.

7d/ Sec. 750.188 was added in 24 F.R. 9076, November 7, 1959.

§ 750.150 Definitions. As used in this subpart and in all contracts, forms, documents, and procedures in connection therewith, unless the context or subject matter otherwise requires, the following terms shall have the following meanings:

(a) "Act" means the Soil Bank Act (70 Stat. 188).

(b) "Secretary" means the Secretary of Agriculture of the United States, or the officer, employee, or other representative of the United States Department of Agriculture acting in his stead pursuant to delegated authority.

(c) "Administrator, ACPS," means the Administrator or Acting Administrator of the Agricultural Conservation Program Service, United States Department of Agriculture.

(d) "Administrator, CSS," means the Administrator or Acting Administrator of the Commodity Stabilization Service, United States Department of Agriculture.

(e) "Deputy Administrator" means the Deputy Administrator for Production Adjustment, or Acting Deputy Administrator for Production Adjustment, Commodity Stabilization Service, United States Department of Agriculture.

(f) "Director" means the Director, or Acting Director, of the Soil Bank Division, Commodity Stabilization Service, United States Department of Agriculture.

(g) "State" means any one of the continental United States.

(h) "County" means county or parish.

(i) "Community committee" means the group of persons elected within a community as the community committee pursuant to the regulations governing the selection and functions of the Agricultural Stabilization and Conservation county and community committees.

(j) "County committee" means the group of persons elected within a county as the county committee pursuant to the regulations governing the selection and functions of the Agricultural Stabilization and Conservation county and community committees.

(k) "State committee" means the group of persons designated for a State by the Secretary as the Agricultural Stabilization and Conservation State Committee.

(l) "Person" means an individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other legal entity, or a State,

political subdivision of a State, or any agency thereof.
*-- --*8/

(m) "Cash tenant," "standing-rent tenant," or "fixed-rent tenant" means a person who rents land from another for a fixed amount of cash or a fixed amount of a commodity to be paid as rent.

(n) "Share tenant" means a person other than a sharecropper who rents land from another person and pays as rent a share of the crops or the proceeds thereof.

(o) "Sharecropper" means a person who works a farm in whole or in part under the general supervision of the operator and is entitled to receive for his labor a share of the crops produced thereon or the proceeds thereof.

8/ The following language at the end of this paragraph (1) deleted in 22 F.R. 7129, September 6, 1957: "The term 'person' shall include two or more persons having a joint or common interest."

(p) "Operator" means the person who is in charge of the supervision and conduct of the farming operations on the entire farm.

-- (q) "Producer" means any person who is an owner or landlord, cash tenant, standing-rent tenant, fixed-rent tenant, share tenant, sharecropper, or in the case of rice, a person who furnishes water for a share of the crop. -- 9/

9/ Material between asterisks was substituted for the following 22 F.R. 7129, September 6, 1957:

"(q) 'Producer' means any person who is an owner, landlord, cash tenant, standing-rent tenant, fixed-rent tenant, share tenant, or sharecropper on the farm, and includes a person who furnishes water for a share of the crop or proceeds thereof."

-- (r) "Farm" means farm as defined in regulations governing determination of acreage and performance (22 F.R. 3747), -- 10/

10/ Material between asterisks was substituted for the following in 22 F.R. 7129, September 6, 1957:

"(r) 'Farm' means all adjacent or nearby farm or range land under the same ownership which is operated by one person, including also (1) any other adjacent or nearby farm or range land which the county committee determines is operated by the same person as part of the same unit in producing range livestock or with respect to the rotation of crops and with workstock, machinery, and labor substantially separate from that for any other land, and (2) any field-rented tract (whether operated by the same or another person) which, together with any other land included in the farm, constitutes a unit with respect to the rotation of crops. A farm shall be regarded as located in the county in which the principal dwelling is situated, or if there is no dwelling thereon it shall be regarded as located in the county in which the major portion of the farm is located."

-- (s) "Cropland" means cropland as defined in the regulations governing determination of acreage and performance (22 F.R. 3747) and amendments thereto. -- 10a/

(t) "Acreage reserve" means the tract of land on a farm which is designated by a producer under the Acreage Reserve Program as being withdrawn from the production of a particular commodity.

10a/ Material between asterisks was substituted for the following in 23 F.R. 9326, December 3, 1958:

"(s) 'Cropland means farm land which was tilled or was in regular crop rotation during the year immediately preceding the first year of the contract period, including also land which was established in permanent vegetative cover, other than trees, since 1953, and which was classified as cropland at the time of seeding, but excluding (1) bearing orchards and vineyards (except the acreage of cropland therein); (2) plowable noncrop open pasture, and (3) any land which constitutes, or will constitute if tillage is continued, an erosion hazard to the community."

(u) "Conservation reserve" means the tract or tracts of land on a farm which is designated by a producer in his conservation reserve contract as being set aside for soil-, water-, wildlife-, or forest-conserving uses for a period of years specified in the contract.

(v) "Producer unit" means a tract of land farmed by (1) a landlord, owner, cash tenant, or fixed-rent tenant, with his own labor or with hired labor (not with tenants or sharecroppers), or (2) a share tenant without the aid of any sharecropper, or (3) a sharecropper.

(w) *--"Tame hay" means a stand of perennial grass or legumes which normally requires preparation of the land and seeding and from which the growth was harvested for hay or silage during either of the two years preceding the first year of the contract period for the land first placed in the

conservation reserve. -- 11/ The stands of grass or legumes which will be classified as tame hay in a State will be determined by the State Committee in consultation with the Land Grant College.

(x) "Contract" means a Soil Bank Conservation Reserve Contract (Form CSS-811 (Soil Bank)).

(y) "Farm Soil Bank base" means the acreage established as the Soil Bank base for the farm pursuant to § 750.158 (c).

11/ Material between asterisks was substituted for the following in 23 F.R. 7279, September 19, 1958: "'Tame hay' means a stand of perennial grass or legumes which normally requires preparation of the land and seeding and from which the growth was harvested for hay or silage during either of the two years preceding the first year of the contract period.", which had been substituted for the following in 21 F.R. 8792, November 14, 1956: "'Tame hay' means a stand of perennial grass or legumes which normally requires preparation of the land seeding and from which hay was harvested during either of the 2 years preceding the first year of the contract period."

(z) "Soil Bank base crops" means the crops included in establishing the farm Soil Bank base.

§750.151 Administration. (a) The conservation reserve program will be administered in the field by State and county committees under the general direction and supervision of the Administrator, CSS. Members of county committees are hereby authorized to sign "Conservation Reserve Contracts" Form CSS-811 (Soil Bank) on behalf of the Secretary. State and county committees do not have authority to modify or waive any of the provisions of these regulations, or any amendment, supplement, or revision thereto, and do not have authority to modify or waive any of the provisions of any contract entered into hereunder except to the extent specifically authorized in this subpart.

§750.152 Purpose. The conservation reserve program is a long-term program designed to carry out the policy of the Act by assisting farmers to divert a portion of their cropland from the production of excessive supplies of agricultural commodities and to carry out soil, water, forest, and wildlife conservation practices. In carrying out this program, the Secretary will enter into contracts with producers (a) to share the costs of establishing approved conservation practices on the conservation reserve and (b) to make

annual payments to such producers for maintaining the conservation uses for the term of the contract.

§750.153 Land eligible for conservation reserve. *-- Land eligible to be designated as the conservation reserve is limited to cropland, land devoted to tame hay which does not require annual tillage, and land which was tilled or was in regular crop-rotation during the year immediately preceding the first year of the contract period which constitutes, or will constitute if tillage is continued, an erosion hazard to the community, but excluding land designated as acreage reserve, *-- land brought into crop use on a farm since December 31, 1956, which is not offset on such farm by the retirement of at least an equal acreage of cropland into non-crop use, --*11a/ land otherwise eligible planted to small fruit, vineyard, nursery stock, *-- forest --*12/ orchard or nut trees, and

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11a/ Material between asterisks added in 23 F.R. 9326, December 3, 1958.

12/ The word "forest" was added in 22 F.R. 2410, April 11, 1957.

the meaning of the foregoing provision. --*14/ Eligible land shall include land which is devoted to crops, such as tame hay, alfalfa, or clovers, which do not require annual tillage. *-- Land which is subject to interests outstanding in persons other than the producer (including, but not limited to, easements, rights-of-way, options of purchase and sale, and leases) shall not be eligible unless the county committee determines that such outstanding interests are not likely to prevent the establishment and maintenance of the conservation practice for the contract period. --*14a/ The total acreage of land on a farm which may be devoted to the conservation reserve shall be not less than 5 acres, except that (a) in case the conservation reserve is to be planted to trees the minimum acreage shall be two acres and (b) State committee where the average tillable acreage on farms in the county is relatively small, the minimum may be reduced to not less than one acre for any farm

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14/ Material between asterisks added in 23 F.R. 7279, September 19, 1958.

14a/ Material between asterisks added in 24 F.R. 5169, June 25, 1959.

if the county committee determines that such action will promote the purposes of the program and that the total tillable acreage on the farm is too small to warrant a larger minimum, *-- and (c) where the entire eligible land on the farm is placed in the conservation reserve, the minimum acreage shall be one acre, --*15/ *-- and (d) where control of a part of the conservation reserve is transferred to a person not signatory to the original contract, the minimum acreage on each farm after reconstitution due to such transfer shall be the acreage in that part of the conservation reserve located on each farm after such reconstitution. --*16/

*-- §750.153a Farms under new ownership. Effective with respect to contracts under which 1958 or a subsequent year would be the first year of the contract period, a farm as to which the ownership has changed shall not be eligible to be placed in the conservation reserve during the first twelve months of the new ownership unless the county committee determines that the farm would

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15/ Material between asterisks added in 22 F.R. 2410, April 11, 1957.

16/ Material between asterisks added in 23 F.R. 1917, March 22, 1958.

continue to be farmed by the new owner in the absence of the Soil Bank Program. --*17/

§750.155a State and county allocations of 1959 program authorization--(a) Basis for allocation to States. Each State's share of the 1959 program authorization shall cover (1) the authorization for annual payments on existing contracts and (2) the authorization for new contracts in 1959. The authorization for new contracts in 1959 for each State shall be determined by the Administrator, CSS, taking into consideration the annual payments and cost-sharing payments which will be required by each State to attain its goal for new contracts in 1959. Any unused authorization will be reallocated by the Administrator, CSS.

§750.156 Conservation reserve contract--(a) Required signatures. In order for producers on a farm to participate in the conservation reserve program, a Soil Bank Conservation Reserve Contract (Form CSS-811 (Soil Bank)) must be entered into by the producers having control of the farm. The farm owner or

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17/ Section 750.153a was added in 22 F.R. 9641, December 3, 1957.

owners must sign the contract, except that a farm operator who is a cash tenant, standing-rent tenant, or fixed-rent tenant (but not a share tenant) for the entire contract period may sign the contract in lieu of the owner upon presentation of evidence satisfactory to the county committee of his control of the farm for such period. The farm operator if other than the owner must also sign the contract. Where parts of the farm are separately owned, each owner, or the farm operator in lieu thereof as provided above, must execute the contract. If an owner or a tenant-operator who enters into a contract loses control of the farm before the end of the contract period, his successor, if any, as owner or tenant-operator, as the case may be, during the contract period may upon his request be substituted under the contract as owner or tenant-operator by executing a form prescribed by the Administrator, CSS, for such purposes. Sharecroppers and other producers on a farm who do not have any control thereof are not required to sign the contract.

(b) Closing dates. *-- A contract which includes 1956 as a part of the contract period must be signed by the farm operator and filed with the county committee not later than November 30, 1956. If a person in addition to the operator is required to sign the contract, the operator must sign the contract and deliver a signed copy to the

county committee not later than November 30, 1956, and must obtain the signature of such other person and furnish the fully executed contract to the county committee not later than December 31, 1956. --*21/ *-- A contract under which the contract period begins with the year 1957 must be signed by the farm operator and filed with the county committee not later than April 15, 1957, or such earlier date as may be established by the State committee. If a person in addition to the operator is required to sign the contract, the operator must sign the contract and deliver a signed copy of it to the county committee not later than April 15, 1957, or such earlier date as may be established by the State committee,

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21/ Material between asterisks was substituted for the following in 21 F.R. 10464, September 29, 1956: "A contract which includes 1956 as a part of the contract period must be signed by all the producers who are required to sign the contract and filed with the county committee not later than *-- November 30, 1956." --* a/

a/ "November 30, 1956" was substituted for "October 15, 1956" in 21 F.R. 8792, November 14, 1956.

and must obtain the signature of each such other person and furnish the fully executed contract to the county committee by the following May 15 or such earlier date as may be established by the State committee.--* 21a/ *-- For land for which the first year of the

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21a/ Material between asterisks as well as the material quoted in footnote 22/ and the next to the last sentence in the present paragraph (b) (see footnote 25) but excluding material added in footnote 21b/ was substituted for the following in 22 F.R. 3040, April 30, 1957: "A contract under which the contract period begins with any year subsequent to 1956 must be signed by all the producers who are required to sign the contract and filed with the county committee not later than *-- April --* b/ 15 of the first year of the contract period or such earlier date as may be established by the State committee, except that contracts starting with the year 1961 must be entered into not later than December 31, 1960, and no contract can be entered into after this date."

b/ "April" was substituted for "March" in 22 F.R. 2410, April 11, 1957.

contract period is 1957, the State committee may, in order to prevent undue hardship, authorize the county committee to accept a contract after the closing dates specified above if because of misinformation or misunderstanding, the producer was under the impression that he had filed such contract, or did not realize that he had to file such contract by the date specified.--* 21b/ *-- For any contract under which the contract period begins with 1958 *-- --* 21c/ an Application for Conservation Reserve Contract (Form CSS-839 (Soil Bank)) must be signed by the farm operator and filed with the county committee not later than April 15 of the first year of the contract period or such eariler date as may be established by the State committee, and the contract must be signed by all the producers who are required to sign the contract and filed with the county committee not later than 30 days following the closing date for filing the Application for Conservation Reserve

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21b/ Material between asterisks added in 24 F.R. 9075, November 7, 1959.

21c/ The words "or any subsequent year" deleted in 24 F.R. 2676, April 8, 1959.

Contract as provided for in this sentence --* 22/ *-- except that the *-- State committee --* 23/ may, in order to prevent undue hardship, authorize the county committee to accept such application or

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22/ Material between asterisks (including the words quoted in footnote 21c/) was substituted for the following in 23 F.R. 1917, March 22, 1958: "A contract under which the contract period begins with any year subsequent to 1957 must be signed by the farm operator and filed with the county committee not later than April 15 of the first year of the contract period or such earlier date as may be established by the State committee. If a person in addition to the operator is required to sign the contract, the operator must sign the contract and deliver a signed copy of it to the county committee not later than April 15 of the first year of the contract or such earlier date as may be established by the State committee, and must obtain the signature of each such other person and furnish the fully executed contract to the county committee not later than thirty days after he signed the contract or by the following May 15, whichever is earlier."

23/ Words "State committee" were substituted for "Administrator, CSS," in 23 F.R. 7981, October 16, 1958.

contract after the dates specified in this sentence if because of misinformation or misunderstanding, the producer was under the impression that he had filed such application or contract, or did not realize that he had to file such application or contract by the dates specified. --* 24/ *--However, a contract starting with the year 1961 must be entered into by December 31, 1960, and no contract can be entered into after this date. --* 25/ However, a contract entered into by that date may be extended as provided in this subpart.

(c) Contract period. *-- The contract period shall start on January 1, 1956 for contracts including 1956 in the contract period and on April 15 of the first year of the contract period for all other contracts. *-- A practice started before April 15 of the first year of the contract period and after the producer has signed a contract or an application for a contract shall be considered as having been started during

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24/ Material between asterisks, beginning with "except that the" was added in 23 F.R. 5955, August 6, 1958.

25/ This sentence was part of the material substituted in 22 F.R. 3040, April 30, 1957, mentioned in footnote 21a/.

the first year of the contract period. --* 26/ The restrictions on the use of the designated acreage shall become effective as of the time performance of a practice thereon is started or April 15 of the first year of the contract period, whichever occurs first. The contract period shall end on December 31 of the last year of the contract period and shall be for not less than 3 years nor more than 15 years, as follows: --* 27/

(1) If the county committee determines that the acreage on the farm designated as the conservation reserve is

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26/ Material between asterisks was substituted for the following in 23 F.R. 7279, September 19, 1958: "A practice started before April 15 of the first year of the contract period and after the producer has signed a contract shall be considered as having been started during the first year of the contract period."

27/ Material between asterisks beginning after "(c) Contract period." (as well as the material quoted in footnote 26/) was substituted for the following in 22 F.R. 2410, April 11, 1957: "The contract period shall be not less than three calendar years or more than fifteen calendar years, as follows:"

adequately covered by approved protective vegetative cover, the contract period shall be *-- three years, five years, or ten years, --* 28/ at the election of the producer, *-- under a contract for which 1956, 1957, or 1958 was the first year of the contract period, and such period shall be not less than three and not more than ten years, as the producer elects, under a contract for which 1959 or a subsequent year is the first year of the contract period; --* 29/ Provided, That no contract shall expire prior to December 31, 1959.

--* (2) If the county committee determines that the acreage on the farm designated as the conservation reserve requires the establishment of protective vegetative cover (other than trees or shrubs), water storage facilities, or other soil-, water-, or wildlife-conserving uses, the contract period shall be

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28/ Material between asterisks was substituted for "three years or five years" in 21 F.R. 1064, December 29, 1956.

29/ Material between asterisks, beginning with "under a contract" on preceding page, was added in 23 F.R. 7279, September 19, 1958.

five years, except that it may be ten years at the election of the producer *-- under a contract for which 1956, 1957, or 1958 is the first year of the contract period, and such period may be not less than five and not more than ten years, as the producer elects, under a contract for which 1959 or a subsequent year is the first year of the contract period, --* 30/ but may not extend beyond December 31, 1969. --* 31/

30/ Material between asterisks was added in 23 F.R. 7279, September 19, 1958.

31/ Material between asterisks (except that material included in footnote 30/) was substituted for the following in 23 F.R. 1107, February 20, 1958:

"(2) If the county committee determines that the acreage on the farm designated as the conservation reserve requires the establishment of protective vegetative cover (other than trees or shrubs), water storage facilities, or other soil-, water-, or wildlife-conserving uses, the contract period shall be five years, except that it may be ten years at the election of the producer in the case of grass or legume cover established under practice A-2, but may not extend beyond December 31, 1969."

750.157 (b) Establishment and maintenance of vegetative cover and practices. (1) Each producer signatory to the contract shall agree to establish and maintain (or to maintain only, in the case of approved cover already established) in accordance with good farming practice for the contract period so long as he retains control of the farm, an approved protective vegetative cover or other approved conservation practices on the conservation reserve as specified in the contract: *-- Provided, That the conservation reserve may, in the last six months of the final year of the contract period, be planted to orchard trees, nut trees or nursery stock or planted in any crop normally seeded in such six months period in the area for harvest in a later year; --* 45/ *-- Provided further, That with

45/ Material between asterisks was substituted in 21 F.R. 8792, November 14, 1956 for the following: "Provided, That the conservation reserve may, in the fall of the final year of the contract period, be planted in any crop which is normally seeded in the fall in the area for harvest in a later year."

the approval of the county committee land in the conservation reserve may be devoted to fire lanes or fire breaks where these are determined to be necessary for the protection of the conservation reserve or the farm or ranch buildings. --* 46/ *-- Failure to maintain for the contract period the protective vegetative cover or other conservation practices for which cost-sharing was received under this program shall be considered a violation of the contract, except that (i) destruction of the vegetative cover during the contract period for the purpose of planting during the last six months of the period orchard trees, nut trees or nursery stock, or a crop normally seeded during such period for harvest in a later year, or (ii) destruction of the vegetative cover during the last year of the contract period for the purpose of carrying out summer fallow operations under specifications available at the office of the county committee, or (iii) destruction of the vegetative cover with the approval of the county committee for the purpose of establishing a fire lane or fire break, or changing to another approved conservation practice authorized by the county committee shall not be considered a

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46/ Material between asterisks added in 23 F.R. 6781, September 4, 1958.

violation of the contract. --*47/

*-- (2) Approved protective vegetative cover (other than tree or shrub cover) shall be limited to perennial grasses and perennial legumes normally seeded in the area for hay or pasture: Provided, That approved protective vegetative cover may include other

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47/ Material between asterisks substituted for the following in 24 F.R. 9075, November 7, 1959: "Failure to maintain for the contract period the protective vegetative cover or other conservation practices for which cost-sharing was received under this program shall be considered a violation of the contract, *-- except that destruction of the vegetative cover during the contract period for the purpose of planting during the last six months of the period orchard trees, nut trees or nursery stock, or a crop normally seeded during such period for harvest in a later year or destruction of the vegetative cover with the approval of the county committee for the purpose of establishing a fire lane or fire break, or changing to another approved conservation practice authorized by the county committee shall not be considered a violation of the contract. --* a/

a/ Material between asterisks added in 23 F.R. 6781, September 4, 1958.

grasses and legumes and volunteer vegetative cover, upon recommendation by the county committee, the local Soil Conservation Service technician and the Forest Service representative having responsibility for farm forestry in the county, and approval of the State ASC Committee, the State Conservationist of the Soil Conservation Service, and the Forest Service official having responsibility for farm forestry in the State. Approved protective vegetative cover shall be adequate to provide good protection from wind and water erosion for the contract period and where practicable shall be of specific benefit to wildlife. Volunteer vegetative cover may be included as approved protective cover only under conditions and standards prescribed by the State committee, the State conservationist of the Soil Conservation Service, and the Forest Service official having responsibility for farm forestry in the State and only where it is determined that it will be impracticable at any time during the period of the contract to require the establishment of grasses and legumes normally seeded in the area

for hay or pasture. --* 48/

(c) Selection of conservation practices. The conservation practices to be carried out on the conservation reserve shall be approved by the county committee. The producers on the farm shall be given the opportunity to request from the eligible practices designated in paragraph (d) of this section the particular practices they desire to carry out on the conservation reserve.

48/ Material between asterisks was substituted for the following in 21 F.R. 10464, December 29, 1956:

"(2) Approved protective vegetative cover (other than tree and shrub cover) shall be limited to *-- --* d/ varieties of perennial grasses and perennial legumes normally seeded in the area for hay or pasture; Provided, That approved protective vegetative cover may include other grasses and legumes upon recommendation by the State committee and approval of the Administrator, ACPS. Approved protective vegetative cover shall be adequate to provide good protection from wind and water erosion and where practical shall be of specific benefit to wildlife, as determined by the county committee."

d/ The word "tame" deleted in 21 F.R. 8792, November 14, 1956.

phosphate or gypsum applied under this practice shall be limited to applications needed in connection with the establishment of eligible vegetative cover.)

*-- A-7--Initial establishment of a stand of trees or shrubs on farmland for erosion control, watershed protection, or forestry purposes. For land for which the first year of the contract period is 1958 or a subsequent year, practice A-7 shall be: Initial establishment of a stand of trees or shrubs on farmland for purposes other than the prevention of wind or water erosion.

A-8--Initial establishment of a stand of trees or shrubs on farmland to prevent wind or water erosion. Prevention of wind or water erosion on farmland shall consist of the use of (a) windbreaks, (b) shelterbelts, (c) gully stabilization, and (d) stabilization of streambanks. The use of this practice should include considerations of enhancement to wildlife habitat. This practice shall be applicable only to land for which the first year of the

contract period is 1958 or a subsequent year. --* 50/

B-7--Constructing dams, pits, or ponds as a means of protecting vegetative cover. (The use of such water

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50/ Material between asterisks beginning with "A-7--" on page 31, was substituted for the following in 22 F.R. 9641, December 3, 1957:

"A-7--Initial establishment of a stand of trees or shrubs on farmland for erosion control, watershed protection, or forestry purposes. *--For contracts becoming effective in 1958 or a subsequent year, practice A-7 shall be: Initial establishment of a stand of trees or shrubs on farmland for purposes other than the prevention of wind or water erosion.

"A-8--Initial establishment of a stand of trees or shrubs on farmland to prevent wind or water erosion. (This practice shall be applicable only to contracts becoming effective in 1958 or a subsequent year.)" --* e/

e/ Material between asterisks added in 22 F.R. 7129, September 6, 1957.

for irrigating land other than the conservation reserve acreage shall not be permitted during the period covered by the contract.)

C-14--Constructing dams, pits, or ponds for irrigation water. (The use of such water for irrigating land other than the conservation reserve acreage shall not be permitted during the period covered by the contract.)

D-1--Establishment of vegetative cover for winter protection from erosion.

D-2--Establishment of vegetative cover for summer protection from erosion.

(3) Approval of the use of annual grasses, annual or biennial legumes, and small grains, when seeded without a perennial grass or perennial legume, shall be limited to cases in which the county committee determines that (i) they are of varieties which will reseed so as to provide adequate cover throughout the contract period, (ii) such seedings are necessary to provide temporary protection before more enduring protective vegetative cover can be established, or (iii) seed of adapted perennials is not available.

(4) The specifications for the practices listed in subparagraph (2) of this paragraph will be the same as are applicable under the then current

agricultural conservation program (7 CFR Part 1101), except for changes or additions needed to bring the practice within the provisions of the conservation reserve program. Such specifications will be available at the office of the county committee, and the producer shall obtain such information at that office. *-- In selecting eligible grasses and legumes and developing the seeding rates and rates of application of liming materials and fertilizers, full consideration should be given to the fact that the vegetative cover is to remain on the land for the contract period without the removal of any growth therefrom. For contracts becoming effective in 1958 or a subsequent year, legumes such as alfalfa, red clover, Ladino clover, or sweetclover shall not be included as eligible legumes where the growth thereof, if not removed, would result in failure of the vegetative cover through smothering or where such legumes are not necessary to the establishment of the vegetative cover. --* 51/

(5) The conservation practices listed in subparagraph (2) of this paragraph are designed primarily for the conservation of soil and water for agricultural purposes; however, where

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51/ Material between asterisks added in 22 F.R. 7129, September 6, 1957.

practicable, encouragement shall be given in carrying out practices with the use of materials and methods which will provide wildlife conservation benefits.

(6) The following eligible practices are designed primarily to protect and conserve wildlife resources:

G-1--Establishment and management of cover specifically beneficial to wildlife. This practice will have general applicability in all States, although the plant species and cultural and other operations used may differ from State to State and in different sections of the same State. It includes wildlife cover and food plantings, land operations such as partial discing, and a variety of practices, designed to improve wildlife habitat.

G-2--Water and marsh management to benefit fish and wildlife. This practice includes the development of shallow water areas to improve habitat for waterfowl, fur animals and other wildlife as well as restoration of drained areas (formerly marshland) by installing earth plugs or water control structures in drainage ditches.

G-3--Constructing dams or ponds for fish.

(f) Restoration or improvement of protective vegetative cover. *-- (1) --* 52/ If the county committee determines that a satisfactory stand or protective vegetative cover has been established on the conservation reserve, but due to conditions beyond the control of the producer the stand has deteriorated during the contract period to the extent that the acreage should be reseeded or replanted or that other restoration or improvement measures should be carried out on the conservation reserve for soil protection, the committee may authorize cost-sharing for the reseeding or replanting or other needed restoration or improvement measures except that no cost-sharing shall be approved for restoration or improvement during the last year of the contract period. If the contract is for a period of less than 5 years, restoration or improvement of protective vegetative cover shall not be authorized by the county committee unless the contract is extended for two additional years.

*-- (2) The producer shall, without cost-share payments, restore any protective vegetative cover which is

52/ Material between asterisks added in 23 F.R. 7281, September 19, 1958.

damaged as a result of the impoundment of water in connection with a project under the Watershed Protection and Flood Prevention Act of August 4, 1954, 68 Stat. 666, as amended. --* 52/

(i) Harvesting or grazing or using stored water from the conservation reserve. (1) No crop shall be harvested from the conservation reserve during the contract period except timber in accordance with sound forestry management as determined by the county committee and wildlife or other natural products of such acreage which do not increase supplies of food for domestic animals. *-- However, for any contract under which the contract period begins with 1959 or a subsequent year, the restriction against harvesting shall not apply to a crop which matured and normally would be harvested in the year preceding the first year of the contract period, unless harvesting of the crop in the year preceding the first year of the contract period would have been in violation of an acreage reserve agreement or a conservation reserve contract. --* 55a/ No Christmas trees,

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52/ Material between asterisks added in 23 F.R. 7281, September 19, 1958.

55a/ Material between asterisks was added in 24 F.R. 2723, April 9, 1959.

ornamentals, or Christman greens may be harvested from the conservation reserve during the contract period. Water from water storage for which cost-sharing was received under this program shall not be used for irrigation except for crops on the conservation reserve on the farm.

*-- (k) Unauthorized use of conservation reserve. Effective with respect to land first designated as conservation reserve for 1958 or a subsequent year, the use of any part of the conservation reserve for nonagricultural enterprises (including but not limited to public golf courses, race tracks, amusement parks, airfields, or commercial hunting or fishing enterprises) shall constitute a violation of the contract. For the purposes of this paragraph, hunting or fishing shall be considered a commercial enterprise where the steps considered to be normal to the development of a commercial enterprise are taken, e.g., establishment of specific charges and provision of facilities or services in connection with hunting or fishing in accordance with usual business practices. A farmer who charges an occasional fee for hunting or fishing on the conservation reserve will not be considered as using such land for a commercial enterprise unless he takes such steps as would be considered to be the

actual establishment of a commercial hunting or fishing preserve. --* 57/

750.159 Reconstitution of farm. (a) The definition of a farm in this subpart is the same as the definition of a farm as used in establishing acreage allotments under the Agricultural Adjustment Act of 1938, as amended. If, after a contract is entered into under this subpart, a farm is defined differently for purposes of acreage allotments than a farm is defined at the time the contract is executed, such new definition shall, at the election of the Secretary, apply to the contract from the effective date of such new definition or such later date as the Secretary may specify.

(b) If two or more farms as constituted at the time a contract is entered into are later combined, or if one farm as constituted at the time the contract is entered into is later divided into two or more farms, as a result of a change in the definition of a farm or otherwise, the provisions of the contract and this subpart shall apply to the farm on which the conservation reserve is located after the farm

57/ Material between asterisks, beginning with "(k)" on page 31, was added in 22 F.R. 4779, July 9, 1957.

is reconstituted. In such case the contract shall be modified to reflect the change in the farm soil bank base required by such reconsitution.

-- (c) If the farm is divided the farm soil bank base shall be apportioned among the respective parts as follows: An acreage of the farm soil bank base equal to the acreage allotments for the farm will be apportioned to each part of the same basis as the acreage allotments are apportioned to each part under the regulations governing the establishment of acreage allotments. The remainder of the acreage of the soil bank base, if any, shall be apportioned on the basis of the cropland on each part. If the county committee determines that such apportionment of the remainder of the farm soil bank base results in an apportionment which would not be representative of the farming operations normally carried out on each part, the remainder may be apportioned among the respective parts in the same manner as would have been done if each part had been a completely separate farm. The sum of the soil bank base acreages determined hereunder for the respective parts of the farm shall in no event exceed the farm soil bank base established for the farm prior to its division. -- 71/

71/ Material between asterisks added in 21 F.R. 10464, December 29, 1956.

--* (d) Notwithstanding the provisions of paragraphs (a), (b), and (c) of this section, with respect to contracts under which 1959 or a subsequent year is the first year of the contract period, reconstitution of farms shall be made in accordance with the regulations governing reconstitution of farms, farm allotments, and farm history and soil bank base acreages (7 CFR Part 719, 23 F.R. 6731) and any amendments thereto. --* 72/

§750.162 Practice cost-sharing--(a) Rates of cost-sharing for practices. Subject to the further limitations provided in paragraph (b) of this section, the maximum share which the Secretary will bear of the cost of carrying out an approved practice on the conservation reserve shall be 80 percent of the average cost of performing the practice. The State committee may establish a rate of cost-sharing for practices lower than specified herein, and the county committee may establish a rate lower than that specified herein or than that established by the State committee. For purposes of establishing rates of cost-sharing for practices, the average cost for carrying out a practice may be the average cost for a State, county, a

72/ Material between asterisks added in 23 F.R. 7279, September 19, 1958.

part of a county, or a farm as determined by the State committee. *-- For practices A-2, A-4, A-7, A-8, B-7, C-14, D-1, and D-2, or components thereof approved for land for which 1959 or a subsequent year is the first year of the contract period the rates of cost-sharing at time of approval shall not exceed the applicable agricultural conservation program rates of cost-sharing for these practices or components thereof which are in effect, or which would be in effect if the practices were offered under the agricultural conservation program in the county or area. --* 80/ *-- The rates of cost-sharing for approvals hereafter issued which involve the extension of time for completing and reporting a practice, the replacement of a practice, or the approval of a different practice than one previously approved, on land for which the first year of the contract period was 1958 or an earlier year, shall be such as to reflect the same percentage of the current cost as the conservation reserve practice payment rate in effect at the time the contract was entered into was of the cost of such practice at that time. Flat rates of cost-sharing in effect at the time the

80/ Material between asterisks was added in 23 F.R. 6781, September 4, 1958.

original approvals were issued shall remain in effect for "reapprovals" until costs have changed to such an extent that, if the current cost had been in effect at the time the original approval was issued, different rates of cost-sharing would have been established. --* 80a/

(e) Practices involving the establishment of protective vegetative cover. Costs for practices involving the establishment of protective vegetative cover may be shared even though a good stand is not established if the county committee determines, in accordance with standards approved by the State committee, that the practice was carried out in a manner which would normally result in the establishment of a good stand, and that failure to establish a good stand was due to weather or other conditions beyond the control of the producer. The county committee shall require as a condition of cost-sharing in such cases that the area be reseeded or that other needed protective measures be carried out. Cost-sharing in such cases may be approved also for repeat applications of measures previously

80a/ Material between asterisks was added in 23 F.R. 9326, December 3, 1958.

carried out or for additional eligible measures. Cost-sharing for such measures shall be approved to the extent such measures are needed to assure a good stand even though less than that required by the applicable practice wording for initial approvals.

§750.163 Annual payments -- (a) Amount of payment. An annual payment will be made to the producers on the farm for the period of the contract upon determination by the county committee that they have fulfilled the provisions of the contract entitling them to such payment. The amount of the annual payment shall be determined by multiplying the rate or rates of payment per acre determined in accordance with paragraph (b) or paragraph (c) of this section by the number of acres determined in accordance with paragraph (d) of this section *-- except as otherwise provided in subparagraph (6) of paragraph (b) of this section. --* 84a/

(b) Regular rates of payment. (1) State annual payment rates per acre for the conservation reserve are as follows:

84a/ Material between asterisks was added in 24 F.R. 3366, April 30, 1959.

State	*--Regular rate--1958 or earlier years--*84b/	*--Regular rate--1959--*84c/
New Mexico	$ 8.00	$ 8.00

(2) *-- The provisions of this subparagraph apply only to contracts under which 1958 or an earlier year is the first year of the contract period. --* 84d/ The State committee shall establish a payment rate per acre for each county. In establishing the county payment rates, the State committee shall take into consideration the cash value of the land for the production of commodities customarily grown on such kind of land in the county, the prevailing

84b/ Heading of this column was changed from "Regular rate" in 24 F.R. 3366, April 30, 1959.

84c/ Column of figures entitled "Regular rate--1959" was added in 24 F.R. 3366, April 30, 1959.

84d/ Material between asterisks was added in 24 F.R. 3366, April 30, 1959.

rates for cash rentals of land used for the production of such crops customarily grown in the county, and the productivity of land in the county as compared with land in other counties in the State. *-- Irrigated land will not be considered in establishing the county payment rates. If all the land in the county is irrigated, the county rate shall be the State rate. --* 85/ County payment rates shall be adjusted by the State committee, where necessary, so that the county average payment rates per acre for all counties in the State, weighted by the acreage of cropland for the respective counties will equal the State annual payment per acre.

(3) *-- The provisions of this subparagraph apply only to contracts under which 1958 or an earlier year is the first year of the contract period. --* 84d/ The farm payment rate for each farm in the county shall be the county payment rate determined for the county pursuant to subparagraph (2) of this paragraph except that (i) the State committee may establish different payment rates for different areas of a county to reflect substantial differences between such areas in land productivity,

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85/ Material between asterisks was added in 22 F.R. 2410, April 11, 1957.

84d/ Material between asterisks was added in 24 F.R. 3366, April 30, 1959.

cash value and prevailing rental rates of land used for the production of crops customarily grown in such areas, in which case the rates per acre established for the various areas in a county weighted by the cropland acreage in the respective areas may not exceed the county payment rate, and (ii) the county committee may establish a rate per acre for a farm which is lower than the rate established for the county or the area where it is determined that the land on such farm has a substantial lower productivity, cash value or rental rate than the average of the land in the county or area for which the payment rate for the county or area was established by the State committee.

(4) If any part of the conservation reserve is grazed as provided in §750.157 during the first 3 years of the contract period, no annual payment will be made for such part of the conservation reserve for the year in which grazed, and if any part of the conservation reserve is so grazed after the first 3 years of the contract period, such annual payment shall be at a rate determined in accordance with regulations to be issued by the Secretary.

*-- (5) The provisions of this subparagraph shall apply only to contracts under which 1959 is the first year of the contract period. A payment rate per acre for each county shall be established as follows: The State committee shall

establish a preliminary county payment index taking into consideration the normal gross income per acre of non-irrigated lower value crops and proportionate idle and fallow land, land value per acre for non-irrigated agricultural purposes, 1956-58 Conservation Reserve Program county regular rates per acre, rental rates customarily paid by canneries and other tenants who rent cropland only, and the relationship of fixed costs to the foregoing factors. The preliminary county payment index shall be weighted by the county non-irrigated cropland except high value allotment crop acreage not likely to enter the conservation reserve. The Soil Bank Division, CSS, shall review the county payment indexes recommended by the State committee, convert them to rates per acre, and adjust them where necessary, with the concurrence of the State committee, to improve relationships across State lines. The county basic payment rate per acre for counties having irrigated cropland only shall be established so as to approximate the rates for counties having the lowest rates for non-irrigated land.

(6) For land for which 1959 is the first year of the contract period, the regular annual payment rate approved for the farm in 1959 shall apply to the acreage placed in the conservation reserve in 1959 which represents a reduction in the acreage devoted to soil bank base crops below the farm soil bank base and

a non-diversion rate established in accordance with paragraph (c) of this section shall apply to all other acreage placed in the conservation reserve in 1959: Provided, That in the case of contracts under which all the eligible acreage on the farm not covered by an existing contract (except land devoted to a home garden and land approved by the county committee as needed for livestock lanes or farm roads, or both) is placed in the conservation reserve in 1959, the regular annual payment rate approved for the farm in 1959 shall apply to all land placed in the conservation reserve in 1959 and shall continue to apply to such land or any part of such land for the years it remains under contract. --* 85a/

(c) Non-diversion rate. The non-diversion rate for a farm shall be 30 per centum of the regular payment rate for the farm, rounded to the nearest ten cents, and shall apply to that part of the conservation reserve which the producers have placed in the conservation reserve program without agreeing to make a corresponding reduction in the acreage devoted to soil bank base crops below the farm soil bank base. *--Notwith-

85a/ Subparagraphs (5) and (6) were added in 24 F.R. 3366, April 30, 1959.

standing any other provision of this paragraph, the non-diversion rate for land first placed under contract in 1958 *-- --*86/ (1) may be up to 50 per centum of the regular rate where all eligible land on a farm is placed in the conservation reserve or for any land placed under contract which is to be planted to forest trees under practice A-7, provided the county committee determines that the land value, rental rate, or productivity of the farm justifies such higher rate; and (2) may be up to 100 per centum of the regular rate where all eligible land is to be planted to forest trees under practice A-7 provided the county committee determines that the land value, rental rate, or productivity of the farm justifies such

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86/ The words "or a subsequent year" were deleted in 24 F.R. 3366, April 30, 1959.

higher rate. --* 86a/ *--Notwithstanding any other provision of this paragraph, the non-diversion rate for land for which 1959 is the first year of the contract period shall be 50 per centum of the regular rate approved for the farm in 1959. Except as otherwise provided in subparagraph (6) of paragraph (b) of this section, such non-diversion rate for 1959 shall apply to that acreage placed in the conservation reserve in 1959 which does not represent a reduction in the acreage devoted to soil bank base crops below the farm soil bank base. --*86b/

86a/ The material between asterisks, beginning on page 58 (including the material quoted in footnote 86/), was added and the following sentence was deleted in 22 F.R. 7129, September 6, 1957: "The non-diversion rate shall be applicable only (1) if the farm soil bank base for each year of the contract period is not more than 30 acres, or (2) if the producers place the entire eligible land on the farm in the conservation reserve."

86b/ Material between asterisks was added in 24 F.R. 3366, April 30, 1959.

§750.164 Limitation on payments.
-- (a) -- 92/ The total of all annual payments under the conservation reserve program to any producer for any year with respect to all farms in which he has an interest shall not exceed $5,000.00, except that with the approval of the Secretary the total annual payment limitation may be increased in any case where the entire eligible land on a farm is designated as conservation reserve or where the erosion hazard is such that an increase in the limitation is warranted in order to more effectively accomplish the purposes of the program.
*-- It shall be considered a violation of the contract if a producer has entered into a contract or contracts, or has adopted, or participated in adopting, a scheme or device, including but not limited to, the dissolution, reorganization, revival, formation, or use of any corporation, partnership, estate, or trust, the effect of which is to evade or exceed the maximum payment limitation: Provided, That if it is determined that the maximum payment limitation has in fact been evaded or exceeded but that the producer had no intention of evading or exceeding such limitation, it shall not be considered a violation of the contract but the contract or contracts shall be handled in accordance with the

92/ "(a)" inserted in 23 F.R. 2895, May 1, 1958.

procedures applicable to contracts not in conformity with the regulations. The settlor and beneficiaries of a family trust created on or after August 16, 1956, shall be limited to aggregate annual payments under the Conservation Reserve Program of $5,000. --* 93/ *-- For purposes

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93/ Material between asterisks substituted in 25 F.R. 1867, March 3, 1960, for the following which was added in 22 F.R. 4779, July 9, 1957, with the exception of the material noted in footnote 94/:

"*-- All or any part of the annual payment which otherwise would be due any producer may be withheld, or required to be refunded, if he has adopted, or participated in adopting, any scheme or device, including the dissolution, reorganization, revival, formation, or use of any corporation, partnership, estate, trust or by any other means designed to evade, or which has the effect of evading the provisions of this section. --* 94/ A family trust created on or after August 16, 1956, will be considered a scheme or device to evade the provisions of this section if it results in the settlor and beneficiaries of the trust receiving in the aggregate annual payments under the conservation reserve program for any year

of the contract period in excess of $5,000."

94/ Material between asterisks added in 21 F.R. 8792, November 14, 1956.

of this provision, members of the family include husband or wife of the settlor, children of the settlor, their husbands and wives, and members of the immediate household of the settlor; and payments to a trustee shall be regarded as payments to the beneficiaries of the trust. --* 95/ *-- Effective with respect to contracts entered into on or after November 15, 1957, for purposes of this section, a family shall include grandchildren of the settlor, step-children of a child of the settlor, and any minor related to the settlor by blood or marriage. --* 96/

*-- (b) For purposes of applying the payment limitation prescribed in paragraph (a) of this section, the rules

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95/ Material between asterisks was substituted for the following in 22 F.R. 9641, December 3, 1957, which had been added in 22 F.R. 4779, July 9, 1957: "For purposes of this provision, a family shall include husband, wife, children, their husbands and wives, and other members of the immediate household; and payments to a trustee shall be regarded as payments to the beneficiaries of the trust."

96/ Material between asterisks added in 22 F.R. 9641, December 3, 1957.

contained in subparagraphs (1) through (6) of this paragraph shall be effective to determine whether certain individuals interested in farming operations as landowners, landlords, tenants or sharecroppers are to be treated as one producer or as separate producers. In cases in which more than one rule would appear to be applicable, the rule which is most restrictive on the number of producers shall apply.

(1) A partnership shall be considered as a producer. Individual members of the partnership may be considered as separate producers or recognized in another capacity as landowners, landlords, tenants, or sharecroppers, on the same farm or on another farm only if (i) the individual members operating in a separate capacity are not identical with the membership of the partnership, and (ii) the individual members also operated as separate producers or in a separate capacity as producers on the farm during the year preceding the first year of the contract period.

(2) A corporation or association shall be considered as a producer. A stockholder who owns a majority of the stock of a corporation shall not be considered as a separate producer on the same farm not recognized in any other capacity on the same farm as a landowner, landlord, tenant or sharecropper.

(3) An estate or trust shall be considered as a producer unless the estate has only one heir or the trust has only one beneficiary, in which case only the sole heir or the sole beneficiary shall be considered as a producer. Subject to the provisions of paragraph (a) of this section, an individual who is not the sole heir of the estate or the sole beneficiary of the trust may be considered as a separate producer or recognized in a different capacity as landlord, landowner, tenant, or sharecropper, on the same farm or in another farm, provided such separate producer status is established to the satisfaction of the county committee.

(4) Two or more individuals operating as a group under an arrangment which, although lacking the legal elements of a partnership or corporation, is in the nature of a joint undertaking shall be considered as a producer. (Clubs, societies, fraternal and religious organizations, as well as informal arrangements between two or more individuals, are examples of such groups.) Individual members of the group shall not be considered as separate producers on the same farm nor recognized on the same farm in any other capacity as landowners, landlords, tenants, or sharecroppers.

(5) Husband and wife shall not be considered as separate producers nor recognized in any other capacity as

landowners, landlords, tenants, or sharecroppers, on the same farm or on different farms. Other individuals having any family relationship may be considered as separate producers if they are participating on different farms. Such individuals may be considered as separate producers on the same farm or recognized in different capacities on the same farm as landlords, landowners, tenants, or sharecroppers only if such individuals operated as separate producers or in separate capacities during the year preceding the first year of the contract period.

(6) Individuals having a joint or common interest arising out of their interests in the ownership of the farm as joint tenants, tenants by the entirety or tenants in common shall not be considered as separate producers on the same farm nor recognized in any other capacity on the same farm as landlords, landowners, tenants or sharecroppers. --* 97/

97/ Material between asterisks, beginning with "(b)" on page 67, was added in 23 F.R. 2895, May 1, 1958.

PART 485 -- SOIL BANK

SUBPART -- CONSERVATION RESERVE PROGRAM

MISCELLANEOUS AMENDMENTS

Pursuant to the authority vested in the Secretary of Agriculture pursuant to the Soil Bank Act (70 Stat. 188) the regulations for the conservation reserve program issued August 16, 1956 (21 F.R. 6289), as amended, are hereby amended as follows:

1. Section 485.164 is renumbered as § 485.164(a).

2. Section 485.164 is amended by adding a paragraph (b) as follows:

(b) For purposes of applying the payment limitation prescribed in paragraph (1) of this section, the rules contained in subparagraphs (1) through (6) of this paragraph shall be effective to determine whether certain individuals interested in farming operations as landowner, landlords, tenants or sharecroppers are to be treated as one producer or as separate producers. In cases in which more than one rule would appear to be applicable, the rule which is most restrictive on the number of producers shall apply.

(1) A partnership shall be considered as a producer. Individual members of the partnership may be recognized in

another capacity as landowners, landlords, tenants or sharecroppers, on the same farm or on another farm only if (i) the individual members operating in a separate capacity are not identical with the membership of the partnership, and (ii) the individual members also operated as separate producers or in a separate capacity as producers on the farm during the year preceding the first year of the contract period.

(2) A corporation or association shall be considered as a producer. A stockholder who owns a majority of the stock of a corporation shall not be considered as a separate producer on the same farm nor recognized in any other capacity on the same farm as a landowner, landlord, tenant, or sharecropper.

(3) An estate or trust shall be considered as a producer unless the estate has only one heir or the trust has only one beneficiary, in which case only the sole heir or the sole beneficiary shall be considered as a producer. Subject to the provisions of paragraph (a) of this section, an individual who is not the sole heir of the estate or the sole beneficiary of the trust may be considered as a separate producer or recognized in a different capacity as landlord, landowner, tenant, or sharecropper, on the same farm or on another farm, provided such separate producer status is established to the satisfaction of the county committee.

(4) Two or more individuals operating as a group under an arrangement which, although lacking the legal elements of a partnership or corporation, is in the nature of a joint undertaking shall be considered as a producer. (Clubs, societies, fraternal and religious organizations, as well as informal arrangements between two or more individuals, are examples of such groups.) Individual members of the group shall not be considered as separate producers on the same farm nor recognized on the same farm in any other capacity as landowners, landlords, tenants, or sharecroppers.

(5) Husband and wife shall not be considered as separate producers nor recognized in any other capacity as landowners, landlords, tenants or sharecroppers, on the same farm or on different farms. Other individuals having any family relationship may be considered as separate producers on the same farm or recognized in different capacities on the same farm as landlords, landowners, tenants, or sharecroppers only if such individuals operated as separate producers or in separate capacities during the year preceding the first year of the contract period.

(6) Individuals having a joint or common interest arising out of their interests in the ownership of the farm as joint tenants, tenants by the entirety or tenants in common shall not

be considered as separate producers on the same farm nor recognized in any other capacity on the same farm as landlords, landowners, tenants or sharecroppers.

(Sec. 124, 70 Stat. 198; 7 U.S.C 1812)

Done at Washington, D.C., this 25th day of April, 1958.

[SEAL]

TRUE D. MORSE,
Acting Secretary.

750.165 Manner and time of payments-- (a) Practice payments. The cost sharing payment for practices shall be made by the State or county committee by means of a Commodity Credit Corporation sight-draft, payable to the producer or his assignee. Payments shall be made as soon as practicable after the extent of the performance of the approved conservation practice, or a component of such practice if authorized by the county committee, has been established. It shall be the responsibility of the producers eligible for payment to submit to the office of the county committee forms and information needed to establish the extent of the performance of approved conservation practices and compliance with the terms and conditions of the contract. Payment of cost-shares for conservation practices carried out on the conservation reserve will be made only upon application submitted on the prescribed form to the office of the county committee by June 30 of the year following the calendar year in which the practice is completed *--except that the *--State committee--* 98/ may authorize payment of cost-shares upon application submitted after such date

98/ The words "State committee" were substituted for "Administrator, CSS," in 23 F.R. 7981, October 16, 1958.

if, in *-- its--* 99/ judgment, such action is necessary in order to prevent undue hardship. --* 100/

(b) Annual payments. The annual payment due producers for each calendar year during the contract period shall be made by the county or State committee by means of Commodity Credit Corporation sight-drafts, payable to the producer or his assignee. The annual payment shall be made as soon as practicable each year after the county committee has determined the acreage devoted to crops and other uses on the farm. *-- It shall be the responsibility of the producers eligible for payment to submit to the office of the county committee forms and information needed to establish the extent of compliance with the terms and conditions of the contract. Payment of the annual payment will be made only upon application submitted on the prescribed form to the office of the county committee by June 30 of the year following the calendar year for which the annual

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99/ The word "its" was substituted for "his" in 23 F.R. 7981, October 16, 1958.

100/ Material between asterisks, beginning with "except that the" (including the original wording, later changed as specified in footnotes 98/ and 99/) was added in 23 F.R. 5955, August 6, 1958.

payment is made --* 101/ *--except that the *-- State committee --* 102/ may authorize payment of the annual payment upon application after such date if, in *-- its --* 103/ judgment, such action is necessary in order to prevent undue hardship. --* 104/

*-- §750.166 Set-offs. Set-offs shall be handled in accordance with the regulations issued by the Secretary governing setoffs (7 CFR Part 13, 23 F.R. 3757)

101/ Material between asterisks added in 21 F.R. 8792, November 14, 1956.

102/ The words "State committee" were substituted for "Administrator, CSS," in 23 F.R. 7981, October 16, 1958.

103/ The word "its" was substituted for "his" in 23 F.R. 7981, October 16, 1958.

104/ Material between asterisks, beginning with "except that the" (including the original wording, later changed as specified in footnotes 102/ and 103/) was added in 23 F.R. 5955, August 6, 1958.

and any amendments thereto. --* 105/

105/ Material between asterisks was substituted for the following in 23 F.R. 7279, September 19, 1958:

"§750.166 Set-offs. *-- (a) General. --* p/ If any producer to whom compensation is payable under the conservation reserve program is indebted to the United States Department of Agriculture, or any agency thereof including Commodity Credit Corporation and Federal Crop Insurance Corporation, or is indebted to any other agency is listed on the county register of indebtedness, the compensation due such producer shall be set off against such indebtedness. Indebtedness owing to the Department of Agriculture, or any agency thereof, shall be given first consideration. Set-offs made pursuant to this section shall not deprive the producer of any right to contest the justness of the indebtedness involved either by administrative appeal or by legal action.

*-- "(b) Assignees. Assignees designated as payees, shall be notified of the amount of any indebtedness owed by a producer subject to set-off on the date

the assignment is filed. Set-off of such indebtedness shall be made prior to payment to the assignee, and the assignee shall be entitled to any amount remaining. The assignee shall be entitled to payment prior to set-off with respect to any amount not specified in the notice of indebtedness owed by the producer." --* q/

p/ "(a) General." added in 22 F.R. 7129, September 6, 1957.

q/ Paragraph (b) added in 22 F.R. 7129, September 6, 1957.

*-- 750.170 Assignments. Any producer who may be entitled to any practice payment or annual payment under the Conservation Reserve Program may assign his right thereto, in whole or in part, subject to the following conditions:

(a) The assignment must be made in writing on a form prescribed by the Administrator.

(b) There may be only one outstanding assignment of compensation payable to a producer for any one year under a contract.

(c) Each assignment may cover only compensation due under one contract.

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In order to be recognized the assignment must be delivered at the office of the county committee which signed the contract. In the event of

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116/ The following was deleted in 22 F.R. 7129, September 6, 1957:

"(d) The producer's signature must be affixed to the assignment in the presence of two witnesses, neither of whom may be an employee or an agent of, or related to, the assignee."

two outstanding assignments by a producer for one year only the first one received at such county office will be recognized. Payment of any compensation which may become due will be paid to the assignee to the extent of the assignment and subject to the provisions of §750.166 pertaining to set offs, unless prior thereto the county office at which the assignment was delivered receives a written release signed by the assignee. No further assignment may be made by the assignee. --* 117/

117/ The entire Sec. 750.170, beginning on page 52 (including the material quoted in footnote 116/) was substituted for the following in 21 F.R. 10464, December 29, 1956:

"§ 750.170 Assignments. *-- Any person who may be entitled to any practice payment or annual payment for the year then current under the Conservation Reserve Program may assign his right thereto, in whole or in part, as security for cash loaned or advances made for the purpose of financing the making of a crop for the then current year, including the carrying out of soil-, water-, forest-, and wildlife-conserving practices. --* r/ No assignment will be recognized unless it is made in writing on a form prescribed by the Secretary and, insofar as

applicable, in accordance with regulations issued by the Secretary for assignment of payments under the Soil Conservation and Domestic Allotment Act (7 CFR Part 1110), which are available in the offices of the State and county committees."

r/ The material between asterisks had been substituted for the following in 21 F.R. 8792, November 14, 1956: "Any person who may be entitled to any practice payment or annual payment under the Conservation Reserve Program may assign his right thereto, in whole or in part, as security for cash loaned or advances made for the purpose of financing the making of a crop in any year during the contract period, including the carrying out of soil-, water-, forest-, and wildlife-conserving practices."

§750.171 Payments not subject to claims. Any annual payment or cost-share, or portion thereof, due any person hereunder shall be determined and allowed without deduction of claims for advances (except as provided in §750.170 and except for indebtedness to the United States subject to set-off); and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the owner or any other creditor.

§750.172 Violations of contract. (a) In the event the Secretary determines that there has been a violation of any contract during the time the producer has control of the farm, and that such violation is of such a substantial nature as to warrant termination of the contract, all rights to annual and cost-share payments and grants under the contract shall be forfeited and all such payments and grants received by the producer shall be refunded with interest at the rate of six per centum per annum. The producers who sign the contract will be obligated to refund all such payments and grants received not only by them but also by any tenant or sharecropper who is not signatory to the contract. Any such tenant or sharecropper shall also be obligated to refund any such payment or grant received by such tenant or sharecropper.

(b) In the event the Secretary determines that there has been a violation of any contract but that such violation is of such a nature as not to warrant termination of the contract, the annual and cost-share payments and grants under the contract shall be adjusted, forfeited and refunded as the Secretary determines to be appropriate. The producers signing the contract will be obligated to accept such adjustments, forfeit such benefits, and make such refunds to the United States of annual and cost-share payments and grants received not only by them but also by any tenant or sharecropper not signatory to the contract as the Secretary determines to be appropriate. Any such tenant or sharecropper will also be obligated to refund, forfeit, and accept such adjustment in annual and cost-share payments and grants paid or otherwise payable to such tenant or sharecropper as the Secretary determines to be appropriate. The Secretary may require payment of interest at a rate not in excess of six per centum per annum on any refund provided for in this paragraph.

(c) Regulations prescribing the rules and procedure for determining whether a violation has occurred, and whether such violation is of such a substantial nature as to warrant termination of the contract, and the amount

of any adjustment, forfeiture or refund which shall be made if such violation is of such a nature as not to warrant termination of the contract, and the rules and procedure for review of such determinations will be published separately at a later date.

§750.174 Filing of false claims. No producer shall file a claim for a payment to which he knows he is not entitled under the provisions of the regulations in this subpart and the contract including claim for a cost-share payment not carried out or for practices carried out in such a manner that they do not meet the required specifications therefor, and the filing of any such claim shall constitute a violation of the contract.

§750.178 Finality of determinations. The facts constituting the basis for any payment, or the amount thereof, under any contract when officially determined in conformity with applicable regulations shall be final and conclusive and shall not be reviewable by any other office or agency of the Government, except that the Act provides for judicial review in the case of the termination of a contract.

*-- §750.188 Provision for handling exceptional cases. Where a producer, in reasonable reliance upon any instruction or commitment of any member,

employee, or representative of a county or State committee, in good faith, substantially performs under a contract, the Administrator may, upon the recommendation of the county and State committees concerned, review the requirements of any provision of the regulations in this subpart and if, in his judgment, relief from the requirements of such provision is justified under all the circumstances of the case to permit a proper disposition thereof, allow payment for such substantial performance in an amount not to exceed the amount which would have been due for the required performance, provided such action is not prohibited by statute. --* 127/

127/ Section 485.188 added in 24 F.R. 9076 November 7, 1959.

PART 485 -- SOIL BANK

SUBPART --CONSERVATION RESERVE PROGRAM FOR 1956 THROUGH 1959

PROVISION FOR HANDLING EXCEPTIONAL CASES.

The regulations governing the Conservation Reserve Program for 1956 through 1959, 21 F.R. 6289, as amended, are hereby further amended by adding the following new §485.188 at the end thereof:

§485.188 Provision for handling exceptional cases.

Where a producer, in reasonable reliance upon any instruction or commitment of any member, employee, or representative of a county or State committee, in good faith, substantially performs under a contract, the Administrator may, upon the recommendation of the county and State committees concerned, review the requirements of any provision of the regulations in this subpart and if, in his judgment, relief from the requirements of such provision is justified under all the circumstances of the case to permit a proper disposition thereof, allow payment for such substantial performance in an amount not to exceed the amount which would have been due for the required performance,

provided such action is not prohibited by statute.

(Sec. 124, 70 Stat. 198; 7 U.S.C. 1812)

Issued at Washington, D.C., this 4th day of November, 1959.

Walter C. Berger,
Administrator,
Commodity Stabilization Service.

APPENDIX C
APPELLANT'S BRIEF

CROPLAND ADJUSTMENTS PROGRAM STATUTES

7 U.S.C.A. § 1838. Conversion of cropland into vegetative cover, water storage, wildlife and conservation uses; contracts with farmers - Authority for calendar years 1965 through 1970; term of agreements

(a) Notwithstanding any other provision of law, for the purpose of reducing the costs of farm programs, assisting farmers in turning their land to non-agricultural uses, promoting the development and conservation of the Nation's soil, water, forest, wildlife, and recreational resources, establishing, protecting, and conserving open spaces and natural beauty, the Secretary of Agriculture is authorized to formulate and carry out a program during the calendar years 1965 through 1970 under which agreements would be entered into with producers as hereinafter provided for periods of not less than five nor more than ten years. No agreement shall be entered into under this section concerning land with respect to which the ownership has changed in the three-year period preceding the first

year of the agreement period unless the new ownership was acquired by will or succession as a result of the death of the previous owner, or unless the new ownership was acquired prior to January 1, 1965, under other circumstances which the Secretary determines, and specifies by regulation, will give adequate assurance that such land was not acquired for the purpose of placing it in the program: *Provided,* That this provision shall not be construed to prohibit the continuation of an agreement by a new owner after an agreement has once been entered into under this section: *Provided further,* That the Secretary shall not require a person who has operated the land to be covered by an agreement under this section for as long as three years preceding the date of the agreement and who controls the land for the agreement period to own the land as a condition of eligibility for entering into the agreement. The foregoing provision shall not prevent a producer from placing a farm in the program if the farm was acquired by the producer to replace an eligible farm from which he was displaced because of its acquisition by any Federal, State, or other agency having the right of eminent domain.

Terms of agreement; specifically designated acreage; land use

(b) The producer shall agree (1) to carry out on a specifically designated acreage of land on the farm regularly

used in the production of crops (including crops, such as tame hay, alfalfa, and clovers, which do not require annual tillage and which have been planted within five years preceding the date of the agreement), hereinafter called "designated acreage", and maintain for the agreement period practices or uses which will conserve soil, water, or forest resources, or establish or protect or conserve open spaces, natural beauty, wildlife or recreational resources, or prevent air or water pollution, in such manner as the Secretary may prescribe (priority being given to the extent practicable to practices or uses which are most likely to result in permanent retirement to noncrop uses); (2) to maintain in conserving crops or uses or allow to remain idle throughout the agreement period the acreage normally devoted to such crops or uses; (3) not to harvest any crop from or graze the designated acreage during the agreement period, unless the Secretary, after certification by by the Governor of the State in which such acreage is situated of the need for grazing or harvesting of such acreage, determines that it is necessary to permit grazing or harvesting in order to alleviate damage, hardship, or suffering caused by severe drought, flood, or other natural disaster, and consents to such grazing or harvesting subject to an appropriate reduction in the rate of payment; and (4) to such additional terms and conditions as the Secretary determines are desirable to effectuate the purposes of the program, including such measures as the Secretary may deem

appropriate to keep the designated acreage free from erosion, insects, weeds, and rodents. Agreements entered into under which 1966 is the first year of the agreement period (A) shall require the producer to divert from production all of one or more crops designated by the Secretary; and (B) shall not provide for diversion from the production of upland cotton in any county in which the county committee by resolution determines, and requests of the Secretary, that there should not be such diversion in 1966.

Federal costs;
annual adjustment payment

(c) Under such agreements the Secretary shall (1) bear such part of the average cost (including labor) for the county or area in which the farm is situated of establishing and maintaining authorized practices or uses on the designated acreage as the Secretary determines to be necessary to effectuate the purposes of the program, but not to exceed the average rate for comparable practices or uses under the agricultural conservation program, and (2) make an annual adjustment payment to the producer for the period of the agreement at such rate or rates as the Secretary determines to be fair and reasonable in consideration of the obligations undertaken by the producers. The rate or rates of annual adjustment payments as determined hereunder may be increased by an amount determined by the Secretary to be appropriate in relation to the benefit to the general public of the use of the

designated acreage if the producer further agrees to permit, without other compensation, access to such acreage by the general public, during the agreement period, for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations. The Secretary and the producer may agree that the annual adjustment payments for all years of the agreement period shall be made either upon approval of the agreement or in such installments as they may agree to be desirable: *Provided,* That for each year any annual adjustment payment is made in advance of performance, the annual adjustment payment shall be reduced by 5 per centum. The Secretary may provide for adjusting any payment on account of failure to comply with the terms and conditions of the program.

Advertising and bid procedures

(d) The Secretary shall, unless he determines that such action will be inconsistent with the effective administration of the program, use an advertising and bid procedure in determining the lands in any area to be covered by agreements. The total acreage placed under contract in any county or local community shall be limited to a percentage of the total eligible acreage in such county or local community which the Secretary determines would not adversely affect the economy of the county or local community. In determining such percentage the Secretary shall give appropriate consideration to the productivity of the acreage being

retired as compared to the average productivity of eligible acreage in the county or local community.

Annual adjustment payment; limitation

(e) The annual adjustment payment shall not exceed 40 per centum of the estimated value, as determined by the Secretary, on the basis of prices in effect at the time the agreement is entered into, of the crops or types of crops which might otherwise be grown. The estimated value may be established by the Secretary on a county, area, or individual farm basis as he deems appropriate.

Termination or modification of agreements

(f) The Secretary may terminate any agreement with a producer by mutual agreement with the producer if the Secretary determines that such termination would be in the public interest, and may agree to such modification of agreements as he may determine to be desirable to carry out the purposes of the program or facilitate its administration.

Allotment histories

(g) Notwithstanding any other provision of law, the Secretary of Agriculture may, to the extent he deems it desirable provide by appropriate regulations for preservation of cropland, crop acreage, and allotment history applicable to acreage diverted from the production of

crops in order to establish or maintain vegetative cover or other approved practices for the purpose of any Federal program under which such history is used as a basis for an allotment or other limitation or for participation in such program.

Utilization of local, county, and state committees

(h) In carrying out the program, the Secretary shall utilize the services of local, county, and State committees established under section 590h of Title 16.

Transfer of funds

(i) For the purpose of obtaining an increase in the permanent retirement of cropland to noncrop uses the Secretary may, notwithstanding any other provision of law, transfer funds available for carrying out the program to any other Federal agency or to States or local government agencies for use in acquiring cropland for the preservation of open spaces, natural beauty, the development of wildlife or recreational facilities, or the prevention of air or water pollution under terms and conditions consistent with and at all costs not greater than those under agreements entered into with producers, provided the Secretary determines that the purposes of the program will be accomplished by such action.

Conservation of open spaces, natural beauty, and recreational resources, and prevention of pollution

(j) The Secretary also is authorized to share the cost with State and local governmental agencies in the establishment of practices or uses which will establish, protect, and conserve open spaces, natural beauty, wildlife or recreational resources, or prevent air or water pollution under terms and conditions and at costs consistent with those under agreements entered into with producers, provided the Secretary determines that the purposes of the program will be accomplished by such action.

Limitation on payments during any calendar year

(k) In carrying out the program, the Secretary shall not during any of the fiscal years ending June 30, 1966 through June 30, 1969 or during the period June 30, 1969 through December 31, 1970, enter into agreements with producers which would require payments to producers in any calendar year under such agreements in excess of $225,000,000 plus any amount by which agreements entered into in prior fiscal years require payments in amounts less than authorized for such prior fiscal years. For purposes of applying this limitation, the annual adjustment payment shall be chargeable to the year in which performance is rendered regardless of the year in which it is made.

Use of facilities of
Commodity Credit Corporation

(l) The Secretary is authorized to utilize the facilities, services, authorities, and funds of the Commodity Credit Corporation in discharging his functions and responsibilities under this program, including payment of costs of administration: *Provided*, That after December 31, 1966, the Commodity Credit Corporation shall not make any expenditures for carrying out the purposes of this subchapter unless the Corporation has received funds to cover such expenditures from appropriations made to carry out the purposes of this subchapter. There are hereby authorized to be appropriated such sums as may be necessary to carry out the program, including such amounts as may be required to make payments to the Corporation for its actual costs incurred or to be incurred under this program.

Payment to successor upon death,
incompetence, or disappearance of
producer entitled to payment

(m) In case any producer who is entitled to any payment or compensation dies, becomes incompetent, or disappears before receiving such payment or compensation, or is succeeded by another who renders or completes the required performance, the payment or compensation shall, without regard to any other provision of law, be made as the Secretary may determine to be fair and

reasonable in all the circumstances and so provide by regulations.

Sharing of compensation or payments with tenants and sharecroppers

(n) The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers, including provision for sharing, on a fair and equitable basis, in payments or compensation under this program.

Effect of diversion on commodity programs

(o) The acreage on any farm which is diverted from the production of any commodity pursuant to an agreement hereafter entered into under this subchapter shall be deemed to be acreage diverted from that commodity for the purposes of any commodity program under which diversion is required as a condition of eligibility for price support.

Advisory Board on Wildlife; membership

(p) The Secretary may, without regard to the civil service laws, appoint an Advisory Board on Wildlife to advise and consult on matters relating to his functions under this title as he deems appropriate. The Board shall consist of twelve persons chosen from members of wildlife organizations, farm organizations, State game and fish agencies, and representatives of the general public. Members of such Advisory Board who are not regular full-time employees

of the United States shall not be entitled to any compensation or expenses.

Rules and regulations

(q) The Secretary shall prescribe such regulations as he determines necessary to carry out the provisions of this subchapter.

Pub.L. 89-321, Title VI, § 602, Nov. 3, 1965, 79 Stat. 1206, amended Pub. L. 90-210, Dec. 18, 1967, 81 Stat. 657; Pub.L. 90-559, § 1(1), (7), Oct. 11, 1968, 82 Stat. 996.

UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service

CROPLAND ADJUSTMENT PROGRAM FOR 1966 THROUGH 1969
(Reprinted from Federal Register of March 8, 1966 (31 F.R. 3483))

Title 7—AGRICULTURE

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER C—SPECIAL PROGRAMS

PART 751—LAND USE ADJUSTMENT PROGRAMS

Subpart—Cropland Adjustment Program for 1966 Through 1969

Sec.

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AUTHORITY: The provisions of this subpart issued under sec. 602(9), 79 Stat. 1210.

§ 751.101 Definitions.

As used in this subpart and in all agreements, forms, documents, and procedures in connection therewith, the following terms shall have the following meanings:

(a) The terms "Secretary," "Deputy Administrator," "State committee," "community," "county," "county committee," "person," "sharechopper," "tenant," "operator," "producer," "farm," and "cropland," shall have the meaning assigned to them in the regulations governing Reconstitution of Farms, Allotments, and Bases, 7 CFR Part 719, as amended.

(b) "Administrator" means the Administrator or Acting Administrator of the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(c) "Director" means the Director or Acting Director of the Farmer Programs Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(d) "State" means any one of the States of the United States.

(e) "Agreement" means a Cropland Adjustment Agreement, including notice of cost-share approval.

(f) "ACP" means the Agricultural Conservation Program formulated under section 8 of the Soil Conservation and Domestic Allotment Act, as amended.

(g) The "State ACP Development Group" consists of the State committee (including the State director of extension), the State conservationist of the Soil Conservation Service, the Forest Service official having jurisdiction of farm forestry in the State, and, in States in the Appalachian region in which a program is developed under section 203 of Public Law 89–4 with the assistance of the State ACP Development Group upon request of the Governor of the State, a representative recommended by the Governor and designated by the Secretary.

(h) "Tame hay" means a stand of grasses or legumes on cropland which does not require annual tillage and which has been seeded within 5 years preceding the date of the agreement and from which a hay crop other than hayseed was mechanically harvested in each of the 3 years preceding the first year of the agreement period: *Provided,* That (1) a hay crop need not have been harvested in each of the 3 years preceding the first year of the agreement period if such a stand of grasses or legumes has been seeded within the last 2 years and followed another crop which at the time of reseeding would have met the 3-year harvesting requirement and (2) a hay crop need not have been harvested in any of the 3 years in which the failure to harvest hay was caused by flood, drought, or other natural disaster.

(i) "Conservation Reserve Program" means the program set forth in regulations issued pursuant to the Soil Bank Act, 7 CFR Part 750.

(j) "Cropland Conversion Program" means the program formulated under section 16 of the Soil Conservation and Domestic Allotment Act, as amended, under which farmers and ranchers enter into agreements providing for changes in cropping systems and land uses, 7 CFR Part 751.

(k) "Great Plains Conservation Program" means the program authorized by the Act of August 7, 1956, 70 Stat. 1115–1117 (16 U.S.C. 590p(b)), 7 CFR Part 601.

§ 751.102 Purposes.

The cropland adjustment program is a program to be carried out during the calendar years 1966, 1967, 1968, and 1969 for the purposes of reducing the costs of farm programs, assisting farmers in turning their land to nonagricultural uses, promoting the development and conservation of the Nation's soil, water forest, wildlife, and recreational resources, and establishing, protecting, and conserving open spaces and natural beauty. To carry out such purposes, the Secretary is authorized to enter into agreements with farmers to divert cropland normally used for the production of allotment crops, feed grains, and other specified crops to approved practices and uses. Under such agreements, the Secretary will (a) make annual adjustment payments to producers with respect to the acreage diverted and (b) share the costs of establishing approved practices and uses on such acreage.

§ 751.103 Administration.

(a) The cropland adjustment program will be administered in the field by State and county committees under the general direction and supervision of the Administrator. Members of county committees are authorized to approve

cropland adjustment agreements on behalf of the Secretary. State and county committees do not have authority to modify or waive any of the provisions of these regulations, or any amendment, supplement, or revision thereto, and do not have authority to modify or waive any of the provisions of any agreement entered into hereunder except to the extent specifically authorized in this subpart.

(b) The State committee shall be responsible for developing recommendations and requirements which are needed to adapt the program to the conditions in the State. The State committee, in developing the practices for which costs will be shared, may consult with the ACP Development Group, the State forester, any State agency for wildlife and conservation, and the president of the land-grant college. Other appropriate State and Federal agencies within the State may be invited to participate in the deliberations.

(c) The county committee shall be responsible for developing recommendations and requirements needed to adapt the program to the conditions in the county. The ACP Development Group and representatives of other appropriate State and Federal agencies within the county may be invited to participate in the deliberations.

§ 751.104 Geographical applicability.

The cropland adjustment program will be applicable in all the States except Alaska and Hawaii.

§ 751.105 State programs.

These regulations together with such State supplementation as is needed to adapt the program for use in the State shall be the State program. The State supplementation shall include the approved practices (including specifica-

tions), rates of cost-sharing, and such conditions and requirements as are needed to assure an effective program in the State. The State supplementation shall be approved by the Director.

§ 751.106 County programs.

The State program together with any county supplementation which may be needed to adapt it for use in the county shall be the county program. The county supplementation shall be approved by the State committee. Copies of bulletins setting forth the State and county programs will be available in the office of the county committee.

§ 751.107 State allocations.

Each State shall be furnished an annual program allocation by the Deputy Administrator.

§ 751.108 Cropland adjustment program bases.

(a) For each farm participating in the program, the county committee shall determine cropland adjustment program bases for wheat, tobacco, peanuts, rice, upland cotton, extra long staple (ELS) cotton, and feed grains (corn, barley, and grain sorghums). The base for feed grains shall be an acreage equivalent to the feed grain base established under the feed grain program and the bases for each other commodity shall be equivalent to the allotment established under the regulations governing the establishment of allotments. Notwithstanding the provisions of this paragraph (a) and § 751.117 the sum of the bases determined under this paragraph and the conserving base shall not exceed the total cropland on the farm.

(b) The county committee shall also determine (1) a nonallotment base which shall be determined by subtracting the sum of the conserving base and the cropland adjustment program bases determined under paragraph (a) of this sec-

tion from the total cropland on the farm and (2) if requested by the producers on the farm, a tame hay base which shall be the acreage of cropland which has been devoted to tame hay on the farm.

(c) Notwithstanding any other provision of this section, no cropland adjustment base shall be established for a new farm allotment or a new farm feed grain base.

§ 751.109 Awarding cropland adjustment agreements.

(a) Producers wishing to be considered for a cropland adjustment program agreement shall file a request therefor with the county committee not later than a date established by the Deputy Administrator, showing the base he desires to divert under the program, the acreage to be designated, and the proposed use to which the land is to be devoted. In order to be eligible for participation, producers must agree to divert cropland adjustment program bases as shown below:

(1) On a farm with a cropland adjustment program base for wheat, upland cotton, ELS cotton, tobacco, peanuts, rice, or feed grains, producers must agree to divert all of at least one such base. In addition, producers may agree to divert all of any one or more of such bases, all the tame hay base, or all or any part of the nonallotment base.

(2) On a farm with no cropland adjustment program base for wheat, upland cotton, ELS cotton, tobacco, peanuts, rice, or feed grains, but with a tame hay base, producers must agree to divert all of such tame hay base. In addition, producers may agree to divert all or any part of the nonallotment base.

(3) Farms with no cropland adjustment base for allotment crops, feed grains, and tame hay base are not eligible for the program.

(4) Upland cotton shall not be included in the program for 1966 if the county committee determines with the

approval of the Deputy Administrator that there should not be diversion from such crop under the program in 1966.

(5) Producers on farms with an established fallow rotation system may designate for zero adjustment payment an acreage of summer fallow land up to the acreage of wheat and barley designated as diverted under the agreement.

(6) Notwithstanding any other provision of this paragraph (a), less than the entire cropland adjustment base for allotment crops or feed grains may be accepted for agreement if (i) the acreage of cropland eligible for designation is less than such base or (ii) the acreage which could be devoted to the crops of such base under the conservation reserve program, the great plains program, or the cropland conversion program is less than such base, and (iii) the producers agree to divert an acreage of such base equal to the acreage of cropland eligible for designation or the acreage which could be devoted to such crops under the programs specified in (ii), as applicable, and agree to a permitted acreage of zero for such base.

(b) Subject to the acreage ceilings provided in § 751.110 and to the extent of funds allocated to the county, agreements shall be approved in the order in which they are filed with the county committee: *Provided,* That the county committee in order to provide an opportunity for participation by a maximum number of producers, may limit the approval of requests for agreements in a manner approved by the Deputy Administrator.

(c) If an application has been made with respect to land not constituting a farm as defined in the regulations governing Reconstitution of Farms, Allotments and Bases, 7 CFR Part 719, as amended, the reconstitution must be made before an agreement may be approved.

§ 751.110 Acreage ceilings.

The total acreage placed under agreement in any county or community shall be limited to a percentage of the total eligible acreage in such county or local community which the Deputy Administrator determines would not adversely affect the economy of the county or local community. In determining such percentage, the Deputy Administrator shall give appropriate consideration to the productivity of the acreage being retired as compared to the average productivity of eligible acreage in the county or local community.

§ 751.111 Cropland adjustment program agreement.

(a) A cropland adjustment agreement shall be executed for each participating farm. The agreement shall be signed by (1) the owner of the farm, (2) the farm operator, and (3) by each other person who as tenant or sharecropper is to share in the adjustment payment.

(b) There shall be only one agreement for a farm.

(c) The final date for signing and filing the agreement with the county committee shall be the date established by the Deputy Administrator, except that the State committee may authorize the county committee to approve an agreement signed or filed after the prescribed date where it is established that failure to sign or file the agreement was not due to the fault or negligence of the producers involved.

(d) Each agreement shall be signed by a member of the county committee on behalf of the Secretary.

§ 751.112 Responsibility of agreement signers.

(a) The owner is responsible for compliance with the agreement and for any refunds or deductions for failure to comply fully with the terms of the agreement while he is a party to the agreement.

(b) Each other person signing the

agreement is jointly and severally responsible with the owner for compliance with the agreement and for any refunds or deductions for failure to comply fully with the terms of the agreement while he is a party to the agreement.

§ 751.113 Agreement period.

(a) The agreement period shall be not less than 5 nor more than 10 years. Where odd and even year conserving bases are established, the period shall be for an even number of years and for not less than 6 years.

(b) The agreement shall become effective for the first year of the agreeement on January 1 or the date of approval, whichever is later, and shall end on December 31 of such year. Each subsequent year of the agreement period shall be on a calendar year basis with the agreement period ending on December 31 of the last year. A practice started before the agreement is approved but after the request has been filed shall be considered as having been started during the agreement period.

(c) All of the land placed under agreement in any one year shall have an agreement period for the same number of years.

(d) An agreement period specified in the agreement which is less than the maximum agreement period authorized under this section may, prior to December 31, 1969, be increased up to such maximum period if the county committee approves such longer period as being in the interests of the program.

§ 751.114 Eligible farm.

A farm is eligible for participation in the program if the farm was operated during the year preceding the first year of the agreement period i.e., crops were planted for harvest or were harvested or there was grazing on the farm during the normal grazing season. The farm will be considered to have been operated during such year if (a) acre-

age was diverted under the conservation reserve, cropland conversion, upland cotton, feed grain, or wheat programs and the county committee determines that no crops were planted for harvest or were harvested because of participation in such a program, (b) a conservation reserve contract with respect to the farm expired on December 31 of the second year preceding the first year of the agreement period and the county committee determines that no crops were planted for harvest or harvested in the year preceding the first year of the agreement period because of anticipated participation in a land use adjustment program for such year, or (c) the county committee determines that crops were not planted for harvest or harvested on the farm because of flood, drought, or other natural disaster.

§ 751.115 Annual adjustment payments.

(a) Producers on the farm shall be eligible for an annual adjustment payment on acreage designated as diverted from the production of crops under the program except as provided in § 751.109 (a)(5). Annual adjustment per unit payment rates determined by the Administrator to be fair and reasonable, taking into account the diversion from the cropland adjustment program bases and other obligations undertaken by the producers, shall be furnished to each county. Annual adjustment per acre payment rates for each county shall be determined upon the basis of such unit rates in accordance with instructions issued by the Administrator.

(b) The farm annual adjustment per acre payment rate for the cropland adjustment program bases shall be established by the county committee by multiplying the farm yield for the commodity by the county annual adjustment per unit payment rate determined under paragraph (a) of this section. The farm

annual adjustment per acre payment rate may be increased by an amount determined by the county committee to be appropriate in relation to the benefit to the general public of the use of the designated acreage if the producer agrees on a form prescribed by the Administrator to permit, without other compensation, access to such acreage by the general public, during the agreement period, for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations.

(c) It has been determined by the Administrator that the farm annual adjustment per acre payment rate computed as provided in this section will not exceed 40 per centum of the estimated value of the crops or types of crops which might otherwise be grown, on the basis of prices in effect at the time the agreement is entered into.

(d) The adjustment payment shall be divided among landowners, tenants, and sharecroppers in the manner agreed upon by them as representing their respective contribution to the crop diversion required by the agreement except that the county committee shall refuse to approve any agreement with respect to which it considers the proposed division of the adjustment payment is not fair and equitable. The applicable adjustment payment and the division of the adjustment payment shall be specified in the agreement.

(e) Each producer signing the agreement may choose to receive his share of the adjustment payment (1) in equal annual payments during the years of the agreement period, or (2) when the county committee determines that it will best serve the interests of the program, in such installments as may be agreed to by the producers on the farm and the county committee: *Provided*, That for each year any annual adjustment payment is made in advance of performance, the annual adjustment payment shall be reduced by 5 per centum.

§ 751.116 Cost-shares for authorized practices.

(a) Subject to conditions and limitations in this subpart, cost-sharing may be authorized for eligible practices needed on the designated acreage during the period of the agreement. Such authorization shall be made on a form prescribed for that purpose and shall be a part of the agreement. Payment of the cost-shares shall be made only upon application submitted on a form prescribed by the Administrator.

(b) The rates of cost-sharing for a county shall not exceed the rates of cost-sharing for comparable practices under the agricultural conservation program. Where practices less costly than those under the agricultural conservation program can be developed that will satisfactorily meet required uses under the cropland adjustment program, rates shall be established consistent with the lower cost of such practices.

(c) The rates of cost-sharing shall be revised when necessary during the agreement period to reflect substantial changes in current costs in carrying out the practices from those used in establishing the rates of cost-sharing in effect at the time the agreement was approved. The revised rates shall be effective for practice approvals issued after the revisions.

(d) Practice specifications and requirements shall be the same as the practice specifications and requirements for comparable practices in the agricultural conservation program, except for such modifications as are needed to effectuate the purposes of the cropland adjustment program. Practice specifications should reflect the use of the minimum application of seed and minerals and use of inexpensive varieties of seed which will produce a cover suitable for protection of the land from erosion for the agreement period. Practices shall be carried out under specifications and re-

quirements which are applicable at the time the notice of practice approval is issued.

(e) The Forest Service and the Soil Conservation Service shall have the same technical responsibilities for cropland adjustment program practices they have for the same or similar agricultural conservation program practices and these responsibilities shall be exercised in the same way.

(f) The establishment or installation of a practice shall be deemed to include the replacement, enlargement or restoration of practices if all of the following conditions exist: (1) Replacement, enlargement, or restoration of the practice is needed to meet the conservation problem; (2) the failure of the original practice was not due to the lack of proper maintenance; and (3) funds are available.

(g) The sharing of costs will be subject to the condition that the practices be maintained for the period of the agreement for the purpose for which cost-sharing was authorized: *Provided,* That if the designated acreage is to be devoted to trees, recreation, water impoundments, or long-term wildlife practices, the practice shall be maintained for a period ending 10 years after the beginning of the agreement period.

(h) In addition to the provisions contained in the subpart, cost-sharing under the cropland adjustment program shall also be subject to the following regulations of the agricultural conservation program in effect at the time the notice of practice approval is issued (7 CFR 701.1–701.97, as amended): Section 701.7 *Adaptation of practices;* § 701.8 *Practice specifications;* § 701.9 *Use of liming materials and commercial fertilizers for vegetative cover;* § 701.11 *Rates of cost-sharing;* § 701.12 *Items of cost on which rates of cost-sharing may be based;* § 701.16 *Method and extent of approval;* § 701.18 *Repair, upkeep, and maintenance of practices;* § 701.23 *Prac-*

tices involving the establishment or improvement of vegetative cover; § 701.24 *Failure to meet minimum requirements;* § 701.25 *Conservation materials and services;* § 701.26 *Practices carried out with aid from ineligible persons;* § 701.27 *Division of Federal cost-shares;* § 701.30 *Persons eligible to file application for payment of Federal cost-shares;* § 701.33 *Compliance with regulatory measures;* and § 701.38 Misuse of purchase orders. For purposes of applying such agricultural conservation program regulations to the cropland adjustment program, the term "program" shall mean the "cropland adjustment program."

§ 751.117 Farm conserving base.

The regulations governing the establishment and maintenance of the farm conserving base, Part 792 of this chapter, shall be applicable to the cropland adjustment program.

§ 751.118 Designation and use of acreage diverted.

(a) Cropland diverted from the production of crops under the program shall be specifically identified and designated for the period of the agreement.

(b) (1) Except as otherwise provided in subparagraph (2) of this paragraph, land eligible for designation must be cropland which was:

(i) Intensively cultivated during at least one of the 4 years immediately preceding the first year of the agreement period;

(ii) Devoted to a conservation use, other than a water storage facility or trees, under the conservation reserve program, cropland conversion program, great plains conservation program, or 1963 land use adjustment agreement, which terminated or expired with respect to such land not more than 4 years immediately preceding the first year of the agreement period;

(iii) Devoted to a hay crop (for hay, green chop, silage or pasture) during all

4 years immediately preceding the first year of the agreement period in a normal rotation pattern and is at least equal in productivity to the land on the farm which would qualify under (i) above; or

(iv) Designated and approved as diverted acreage under upland cotton, feed grain, or wheat programs for 1961 or subsequent years but prior to the first year of the agreement period, except acreage devoted to trees or to a water storage.

(2) The following land is not eligible for designation:

(i) Land which is designated as diverted under any other program;

(ii) Land which is harvested in the first year of the agreement period prior to designation as diverted acreage, except as provided in paragraph (d) of this section;

(iii) Turn rows, drainage ditches, wet low-lying areas, droughty knobs or banks, other areas which normally would not produce a crop and strips of less than four normal rows in skip-row planting patterns;

(iv) Land which the county committee determines the producer reasonably could not expect to use for the production of the crops being diverted because of its physical condition or other reason:

(v) Land which at the time the diverted acreage is designated is expected to be utilized in the first year of the agreement period for industrial development, housing, highway construction, or other use;

(vi) Land devoted to nonagricultural use;

(vii) Land devoted in the first year of the agreement period to asparagus, strawberries, or bush fruits (including new plantings of such crops);

(viii) All land on a farm on which a conservation reserve contract has been canceled since January 1 of the year preceding the first year of the agreement

period because of a scheme or device to exceed the $5,000 payment limitation under the conservation reserve program unless the Deputy Administrator determines that participation in the program would not be against the public interest;

(ix) National wildlife refuges;

(x) Land intended to be used for a specific nonfarm use in a later year, which would not be devoted in the first year of the agreement period to an agricultural use;

(xi) Land owned by the United States or a State or local government (or agency or political subdivision thereof) except (a) any land upon which a homestead or desert land entry has been made and is in good standing and (b) cropland owned and operated by a State, county, or local government which the owner (State, county, or local government) establishes to the satisfaction of the county committee that it has adequate equipment or other facilities readily available for the successful production of row crops and small grains and that the production of such crops is a normal practice for such land;

(xii) Land in an orchard or vineyard; and

(xiii) Land with respect to which the ownership has changed during the 3-year period preceding the first year of the agreement period unless (a) the new ownership was acquired by will or succession as a result of the death of the previous owner; (b) the new ownership was acquired prior to January 1, 1964; (c) the new ownership was acquired prior to January 1, 1965, upon the exercise of an option to purchase entered into prior to January 1, 1964; (d) the new ownership was acquired prior to January 1, 1965, to replace eligible land from which the producer was displaced as a result of the acquisition of such land by a Federal, State, or local agency having the right of eminent domain; or (e) the new ownership was

acquired prior to January 1, 1965, and the county committee determines that (1) the land was acquired by the producer for purpose of farming and not for the purpose of placing it in the program and (2) the producer carried out normal farming operations on the land after the date of acquisition: *Provided,* That a producer shall not be prohibited from entering into an agreement if such producer has operated the land to be designated for as long as three years preceding the first year of the agreement and has control of such land for the agreement period. (These provisions shall not prohibit the continuation of an agreement by a new owner after an agreement has once been entered into under this subpart.)

(xiv) Land offered for agreement with respect to which the productivity is substantially below that of the average land on the farm: *Provided,* That the producer shall be given an opportunity to designate other land which more nearly reflects the productivity of the average land on the farm.

(c) The designated acreage shall be devoted to the use specified in the agreement. The practices shall be established and maintained for the duration of the agreement: *Provided,* That with the approval of the county committee the designated acreage may be devoted to access roads, fire lanes, firebreaks, or other fire prevention measures for the protection of the designated acreage, adjoining land, or the farm buildings, or any other use approved by the Deputy Administrator if such uses are maintained at no expense to the Government in a manner to prevent erosion: *Provided, further,* That the destruction of the vegetative cover is authorized (1) during the last 6 months of the agreement period for the purpose of planting a crop which matures for harvest in a later year, (2) during the last 3 years of the agreement period for carrying out summer fallow operations or planting of small fruit or bush fruit, or (3) during the last 3 years of the

agreement period for the planting of orchard and vineyard crops.

(d) During the period of the agreement, no crop shall be harvested from the designated acreage and such acreage shall not be grazed unless the Secretary, after certification by the Governor of the State in which such acreage is situated of the need for grazing or harvesting of such acreage, determines that it is necessary to permit grazing or harvesting in order to alleviate damage, hardship, or suffering caused by severe drought, flood, or other natural disaster, and consents to such grazing or harvesting subject to appropriate reduction in the rate of adjustment payment. The restriction against harvesting shall not apply to a crop which matured and normally would be harvested in the year preceding the first year of the agreement period unless harvesting of the crop in such year would have been in violation of a Federal agricultural program.

(e) The conservation practices eligible to be carried out on the designated acreage are as follows:

CA–1. *Establishment of perennial grasses or legumes.* (Does not include annual or biennial varieties.)

CA–2. *Establishment of short-term cover.* (Annuals and biennial varieties are eligible, but only where they will furnish adequate protective cover for the duration of the agreement.)

CA–3. *Improvement of perennial cover.* (An inadequate stand of acceptable perennial grasses or legumes are on the land and improvement will serve purpose of CA-1.)

CA–4. *Establishment of stand of trees.* (Same as ACP practice A–7.)

CA–5. *Establishment of food plots or habitat for wildlife.* (Annual, biennial, or perennial varieties. Shrubs or other woody varieties for habitat.)

CA–6. *Development or restoration of shallow water areas for wildlife.* (Same as ACP practice G–2.)

CA–7. *Construction of dams or ponds for wildlife.* (Same as ACP practice G–3.)

CA–8. *Other wildlife practices.* (Same as ACP practice G–4.)

CA–9. *Preservation of open spaces.* (To be developed as needed to achieve program objectives.)

CA–10. *Preservation of natural beauty.* (To be developed as needed to achieve program objectives.)

CA–11. *Prevention of air pollution.* (To be developed as needed to achieve program objectives.)

CA–12. *Prevention of water pollution.* (To be developed as needed to achieve program objectives.)

CA–13. *Establishment of picnic and sports recreation area.* (For developing uses such as trap shooting, ball fields, tennis courts, and golf courses.)

CA–14. *Establishment of camping and nature recreation areas.* (For developing uses such as camp sites, parking areas, nature trails, hiking trails, and riding trails.)

CA–15. *Establishment of summer water sports recreation areas.* (For constructing reservoirs for uses such as swimming, boating, water skiing, wading, and beaches.)

CA–16. *Establishment of winter sports recreation areas.* (For uses such as ski trails, toboggan runways, and ice skating.)

CA–17. *Management of established acceptable cover.* (This practice involves maintenance of a cover which will provide adequate protection from wind and water erosion for the agreement period and for which no cost-sharing is made.

(f) Cost-sharing for practices CA–13, CA–14, CA–15, and CA–16 shall be limited to earthmoving and establishment of vegetative cover, including trees and shrubs, except that for golf courses it shall be limited to vegetative cover on fairways. Any facilities, such as picnic tables, diving boards, bathhouses, and boats, which are necessary for the successful functioning of the applicable enterprise, shall be provided by the producer without cost-sharing.

(g) The designated acreage shall not be devoted to such nonagricultural uses as industrial or residential developments, mining operations, gravel pits, stone quarries, and road rights-of-way. A list of nonagricultural uses which are au-

thorized on the designated acreage shall be available at the county ASCS office.

(h) Information will be available in the county ASCS office as to (i) the availability of the conservation uses and practices in a particular county, and (ii) the specifications for the uses and practices, including any supplementation or modification of such uses and practices.

§ 751.119 Control of erosion, insects, weeds, and rodents.

The producer shall carry out such measures as are needed for the control of erosion, insects, weeds, and rodents on the designated acreage. If the county committee determines that the measures carried out by the farmer are not adequate, it shall prescribe and require the application of such other or additional measures as are needed.

§ 751.120 Determination of compliance.

(a) Determination of the acreage devoted to crops and the acreage designated shall be made in accordance with Part 718 of this chapter, as amended.

(b) A representative of the county committee or of the State committee or any authorized representative of the Secretary shall have the right at any reasonable time to enter a farm, concerning which representations have been made on any forms filed under the program, in order to measure the acreage planted to crops and the acreage which the operator designated as being devoted to approved practices and uses on the farm, to examine any records pertaining thereto, and otherwise to determine the accuracy of a producer's representation and the performance of his obligations under the program.

§ 751.121 Permitted acreage on cropland adjustment program base crops diverted under the program.

The number of acres permitted to be devoted to feed grains or any allotment crop with respect to which an acreage is

designated as diverted under the agreement shall be zero. The number of acres permitted to be devoted to nonallotment crops shall not exceed the acreage determined by subtracting the number of acres of nonallotment base crops designated as diverted under the agreement from the nonallotment base. Notwithstanding any other provision of this section, any acreage which could be devoted to allotment crops and feed grains under the agreement and which is not devoted to such crops may be devoted to nonallotment crops.

§ 751.122 Compliance with the feed grain base and acreage allotments.

(a) The feed grain base and the acreage allotments for the farm with respect to which an acreage of such crops is not designated as diverted under the agreement shall not be exceeded.

(b) The producer shall not exceed the feed grain base and the acreage allotments with respect to any other farm in which he has an interest. The producer shall not be considered as exceeding the feed grain base or acreage allotments on any other farm if he satisfies the county committee that he did not have control of the managerial operations of the noncomplying farm, that he has made a reasonable effort to encourage compliance with the requirements of this paragraph, and that it was through no fault of his own that such farm was not in compliance. In applying the provisions of this paragraph, a landowner or landlord cannot escape responsibility for any allotment or feed grain base being exceeded by leasing for cash or other consideration all or part of a farm. For purposes of this paragraph, the individuals or entity in each category listed below shall be considered as one producer and fully responsible for the actions of any other individual or entity in that category: (1) A partnership and any member of the partnership; (2) a corporation and the majority stockholder of such corpora-

tion; (3) an estate and an heir of the estate with over a 50 percent interest in the estate; (4) a trust and a beneficiary of the trust with over a 50 percent interest in the trust; (5) minor children and the parent, guardian, or other individual legally responsible for the minor; and (6) husband and wife, except that the husband and wife may be considered as a separate producer on any farm if the spouse receiving program benefits does not share to any degree in the crops or proceeds thereof from the noncomplying farm, managerial control of the noncomplying farm by either husband or wife is in no way shared by the spouse, and no changes have been made in the operations or managerial control of the noncomplying farm which would tend to defeat the purposes of this paragraph (b). Any executor, trust officer, or farm manager responsible for the management of a farm shall be considered as a producer on the farm when he receives a percentage of the farm income exceeding 10 percent of the crops or proceeds for such management services.

§ 751.123 Provisions relating to tenants and sharecroppers.

(a) No agreement shall be entered into with a producer if it shall appear—

(1) That the landlord or operator has not afforded his tenants and sharecroppers an opportunity to participate under the agreement in proportion to the number of acres in the respective producer units of such commodity farmed by such tenants or sharecroppers; or

(2) That the landlord or operator has, in anticipation or because of participating in the cropland adjustment program, reduced the number of tenants and sharecroppers on the farm, or the shares of the allotment or base made available to tenants or sharecroppers (if a tenant or sharecropper leaves the farm voluntarily, the failure to replace such tenant

or sharecropper shall not be considered as a reduction in anticipation of participating in the program); or

(3) That there exists between the operator or landlord and any tenant or sharecropper any lease, contract, agreement, or understanding, unfairly exacted or required by the operator or landlord and entered into in contemplation of the signing of any agreement hereunder, the effect or purpose of which is:

(i) To cause the tenant or sharecropper to pay over to the landlord or operator any payment to be paid to him under the agreement; or

(ii) To change the status of any tenant or sharecropper in order to deprive him of any part of the payment or any other right or privilege of his under the agreement to which his actual status with respect to the land prior thereto would have entitled him; or

(iii) To reduce the size of the tenant's or sharecropper's producer unit in contemplation of the signing of the agreement; or

(iv) To increase the rent to be paid by the tenant or decrease the share of the crop or its proceeds to be received by the sharecropper.

(4) That the operator or landlord has adopted any device or scheme of any sort whatever for the purpose of depriving any tenant or any sharecropper of his payment or any other right under the agreement.

(b) The agreement shall be deemed to be in noncompliance if any of the conditions set forth in paragraph (a) of this section occurs after the signing of the agreement.

(c) In addition, no agreement shall be approved if the State or county committee determines for any reason that disapproval is necessary to protect the interests of tenants or sharecroppers.

§ 751.124 Refunds or forfeitures for noncompliance.

(a) Except as otherwise provided in

paragraph (c) of this section, no adjustment payment shall be made to any producer for any year with respect to any farm on which it is determined that for such year:

(1) There has been a failure to comply with the permitted acreage of cropland adjustment program bases diverted under the program as provided in § 751.121;

(2) There has been a failure to maintain the conserving base as provided in § 751.117;

(3) There has been a failure to comply with the feed grain base and acreage allotments as provided in § 751.122: *Provided*, That if the failure to comply is determined under paragraph (b) of § 751.122, the refund or forfeiture shall not be applicable with respect to adjustment payments paid or payable to producers other than those covered by the provisions of such paragraph;

(4) There has been a failure to comply with the prohibition as to harvesting a crop from or grazing the designated acreage as provided in § 751.118(d);

(5) There has been a failure to devote the designated acreage to the use specified in the agreement or to establish and maintain the authorized practice on the designated acreage as provided in § 751.118(c);

(6) The designated acreage has been devoted to an unauthorized use as set forth in § 751.118(g);

(7) There has been a failure to control erosion, insects, weeds, and rodents on the designated acreage as provided in § 751.119; or

(8) There has been a failure to comply with the provisions relating to tenants and sharecroppers as provided in § 751.123.

(b) Except as provided in paragraph (c) of this section, if for any year noncompliance is determined under subparagraph (4), (5), (6), or (7) of paragraph (a) of this section, all cost-share payments paid or payable under the agreement through the year for which

noncompliance is determined shall be forfeited or refunded.

(c) The regulations governing the making of payments when there has been a failure to comply fully with the program, Part 791 of this Chapter, shall be applicable to the cropland adjustment program.

(d) The agreement shall be terminated in any case in which the provisions of this section have required a refund or forfeiture of the entire annual adjustment payment under the agreement for the year and it is determined that the circumstances of the noncompliance were of such nature as to warrant termination. In case of such termination, the producers must refund all adjustment payments and cost-share payments made under the agreement, plus interest as provided under § 751.134.

§ 751.125 Nondiscrimination.

The regulations governing nondiscrimination in federally assisted programs of the Department of Agriculture, 7 CFR Part 15, as amended, shall be applicable to the cropland adjustment program.

§ 751.126 Practices defeating purposes of program.

If the county committee finds that any producer has adopted or participated in any practice which tends to defeat the purposes of the program, it may withhold, or require to be refunded, all or any part of the annual adjustment or cost-share payments which otherwise would be due him under the program. It shall be considered a practice defeating the purposes of the program if the producers do not make available for public use a recreation resource development for which costs are shared or any annual adjustment payment is made.

§ 751.127 Filing of false claims.

The making of a fraudulent representation by a person in the payment

documents or otherwise for the purpose of obtaining a payment from the county committee shall render the person liable, aside from any additional liability under criminal and civil frauds statutes, for a refund of the payments received by him with respect to which the fraudulent representation was made.

§ 751.128 Depriving others of payments.

If the State committee finds that any person has employed any scheme or device (including coercion, fraud, or misrepresentation), the effect of which would be or has been to deprive any other person of the payment due that person under the program, it may withhold in whole or in part from the person participating in or employing such a scheme or device, or require him to refund in whole or in part, the payment which otherwise would be due him under the program.

§ 751.129 Modification of an agreement.

(a) Reconstitution of farms shall be made in accordance with the regulations governing reconstitution of farms, 7 CFR Part 719, as amended.

(b) If the farm is reconstituted because of purchase, sale, change of operation, or otherwise, the agreement shall be modified in accordance with instructions issued by the Deputy Administrator with respect to any resulting farm containing all or any part of the original designated acreage. Such modified agreement or agreements shall reflect the changes in the number of acres in any resulting farm, the designated acreage, the conserving base, the cropland adjustment program bases, interested producers, and division of payments. If producers who were not signatories to the original agreement are required to sign such modified agreement or agreements in accordance with § 751.111(a) but are not willing to become parties to the modified agreement or for any other reason a modified agreement is not en-

tered into, the agreement shall be terminated with respect to the designated acreage not continued in the program, and all unearned adjustment payments and cost-share payments shall be forfeited or refunded. The producers on the farm prior to the reconstitution shall be jointly and severally responsible for refunding the unearned payments previously made. For purposes of this paragraph, adjustment and cost-share payments shall be considered as unearned in an amount computed by multiplying the total amount of adjustment payments paid or payable and the total amount of cost-share payments paid under the agreement with respect to the designated acreage which is not continued in the program by the percentage which the unexpired period of the agreement is of the total period of the agreement: *Provided,* That the year in which the reconstitution occurs shall be considered as part of the unexpired period unless the reconstitution occurs after the start of the normal planting season and there is full compliance with the agreement for the entire year.

(c) Except in cases in which the farm is reconstituted, if the ownership or operation of the farm changes in such a manner that the agreement no longer contains the signatures of producers required to sign the agreement in accordance with § 751.111(a), the agreement shall be modified in accordance with instructions issued by the Deputy Administrator to reflect the new interested producers and new divisions of payments. If such producers are not willing to become parties to the modified agreement or for any other reason a modified agreement is not entered into, the agreement shall be terminated and all unearned adjustment payments and cost-share payments shall be forfeited or refunded. The producers on the farm prior to the change of ownership or operation shall be jointly and severally responsible for refunding the unearned

yments previously made. For pur-
ses of this paragraph, adjustment and
st-share payments shall be considered
unearned in an amount computed by
ultiplying the total amount of adjust-
nt payments paid or payable and the
al amount of cost-share payments
id under the agreement by the per-
ntage which the unexpired period of
e agreement is of the total period of the
reement: *Provided,* That the year in
ich the change of ownership or opera-
n of the farm occurs shall be consid-
ed as part of the unexpired period
less the change of ownership or op-
ation occurs after the start of the
rmal planting season and there is full
mpliance with the agreement for the
ntire year.

(d) Upon request of the producers and
pproval of the county committee, an
greement may be modified to change or
id practices, to change the agreement
eriod as authorized in § 751.113(d), or
make other changes which are not in-
nsistent with this subpart and appli-
ble State and county supplementation.

(e) If the sale or lease of all or any
rt of a cotton allotment under section
4a of the Agricultural Adjustment Act
1938, as amended, occurs during a
eriod in which the farm is covered by a
opland adjustment program agree-
ent, the agreement shall be subject to
appropriate adjustment in accord-
nce with instructions issued by the Dep-
y Administrator, but no adjustment
all be made in the agreement of the
rm to which the allotment is trans-
rred.

(f) Notwithstanding any other provi-
on of this section, a number of acres
cropland equal to the tobacco acreage
lotment which is leased and transferred
accordance with Part 724 of this Chap-
r from a farm subject to a cropland
justment agreement, which might oth-
wise be devoted to nonconserving crops,

shall be considered to be devoted to nonconserving crops on the farm from which the allotment is leased and transferred and shall not be devoted to any other nonconserving use during the period for which the tobacco allotment is leased and transferred.

(g) When authorized by the Administrator, the agreement may be modified to incorporate or reflect the provisions of any cropland adjustment program for any subsequent year.

(h) The Deputy Administrator may authorize other agreement modifications determined to be desirable to carry out the purposes of the program or facilitate its administration.

§ 751.130 Transfer of interest in an agreement.

(a) If during the period covered by an agreement, a producer acquires an interest in all or part of a farm he may, with the consent of the remaining parties to the agreement and approval of the county committee, become a party to the agreement and share in payments thereunder. By becoming a party to the agreement, he also becomes jointly and severally responsible for compliance with the terms of the agreement and liable for any deductions or refunds for failure to comply with the agreement that occurs after he acquires the interest in the farm.

(b) If an agreement signer ceases to be an owner, tenant, or sharecropper on the farm during the agreement period, he thereby ceases to be a party to the agreement. However, this will not relieve him of his liability for deductions and refunds for failure to comply with the terms of the agreement while he was a party to the agreement.

§ 751.131 Successors-in-interest.

In case of death, incompetency, or disappearance of any producer, any payment due him shall be paid to his suc-

cessor, as determined in accordance with the provisions of the regulations in 7 CFR Part 707, as amended.

§ 751.132 Termination of agreements.

(a) The agreement may be terminated upon mutual agreement of the agreement signers and the county committee and approval of the State committee if the county committee determines (1) that the operator of the farm is physically handicapped to such an extent that he could not reasonably be expected to carry out the terms and conditions of the agreement and that to require him to do so would work an undue hardship on him or (2) that the operator is or was at the time he signed the agreement mentally unstable and could not reasonably be expected to comply with the agreement. In case of such terminations, adjustment payments shall be forfeited or refunded in an amount computed by multiplying the total amount of adjustment payments paid or payable under the agreement by the percentage which the unexpired period of the agreement is of the total period of the agreement: *Provided,* That the entire year in which the agreement is terminated shall be considered part of the unexpired period of the agreement for purposes of such computation. Adjustment payments will be made for year of termination. Cost-share for practices performed prior to termination will be paid.

(b) The agreement may be terminated by the county committee upon request by all parties to the agreement upon forfeiture of all adjustment and cost-share payments under the agreement and repayment of any such payments previously made.

(c) The Deputy Administrator may consent to the termination of an agreement in cases where the parties to the agreement are unable to comply with the terms of the agreement due to conditions beyond their control, in cases

where compliance with the terms of the agreement would work a severe hardship on the parties to the agreement, or in cases where termination of the agreement would be in the public interest, provided the parties to the agreement refund such part of the adjustment and cost-share payments made under the agreement as the Deputy Administrator determines appropriate.

(d) The agreement may also be terminated for noncompliance in accordance with § 751.124(d).

§ 751.133 Agreement not in conformity with regulations.

If it is discovered, after an agreement is approved by the county committee, that, through a misunderstanding of the program by a producer acting in good faith, the agreement is not in conformity with these regulations, a new agreement shall be filed or the original agreement corrected to meet all requirements of the program. If the producers currently eligible to sign the new or corrected agreement are unwilling to do so, the agreement shall be terminated and all annual adjustment and cost-share payments paid or payable under the agreement shall be forfeited or refunded except as may be allowed by the Deputy Administrator under the provisions of § 751.136.

§ 751.134 Liability for interest.

(a) Where a refund is required under § 751.129 (b) and (c), interest shall be payable at the rate of 6 per centum per annum from the dates of the payments of the amounts required to be refunded to the date the refund is made.

(b) Where a refund is otherwise required, interest shall be payable at the rate of 6 per centum per annum on the amount of the refund due from the date of written notice to persons liable for such refund to the date the refund is made, except that there shall be no interest due on any amount of such refund

which is remitted to the office of the county committee within 30 days from the date of such notice.

§ 751.135 Appeals.

Any person may obtain reconsideration and review of determinations made under this subpart in accordance with the appeal regulations, 7 CFR Part 780 (29 F.R. 8200), as amended.

§ 751.136 Performance based upon advice or action of county or State committee.

The provisions of Part 790 of this chapter relating to performance based upon action or advice of an authorized representative of the Secretary shall be applicable to the cropland adjustment program.

§ 751.137 Preservation of cropland, crop acreage and allotment history.

The cropland, crop acreage, and allotment history applicable to the acreage diverted from the production of crops in order to establish or maintain cover or other approved practices shall be preserved, for the purpose of any Federal program under which such history is used as a basis for an allotment or other limitation or for participation in such program, for the period covered by the agreement and an equal period thereafter so long as the approved practice is maintained on the land.

§ 751.138 Payments not subject to claims.

Any payments due any person shall be determined and allowed without regard to State law and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the owner or any other creditor, except as provided in § 751.140.

§ 751.139 Assignments.

Any producer who may be entitled to any cost-share payment or annual adjustment payment may assign his rights

thereto in accordance with the regulations governing assignment of payment under the agricultural conservation program, 7 CFR Parts 701 and 709, as amended.

§ 751.140 Setoffs and withholdings.

Setoffs and withholdings shall be handled in accordance with the regulations issued by the Secretary governing setoffs and withholdings, 7 CFR Part 13, as amended.

§ 751.141 Delegation of authority.

No delegation in this subpart to a State or county Committee shall preclude the Administrator, or his designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

The reporting and/or recordkeeping requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Effective date. Upon filing with the Director, Office of the Federal Register.

Signed at Washington, D.C., on March 3, 1966.

H. D. GODFREY,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 66-2394; Filed, Mar. 4, 1966; 12:45 p.m.]

APPENDIX E

RULES OF DECISION ACT

28 U.S.C. §1652. State laws as rules of decision.

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply. (June 25, 1948, c. 646, §1, 62 Stat. 944.)

No. 73-1361

FILED
MAY 23 1974

In the Supreme Court of the United States

OCTOBER TERM, 1973

FRED BALDRIDGE, ET AL., PETITIONERS

v.

JOHN R. HADLEY, ET AL.,

AND

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

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MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

This action was brought in the United States District Court for the District of New Mexico for *de novo* review pursuant to 7 U.S.C. (1964 ed.) 1831(d) of a determination by the New Mexico State Agricultural Stabilization and Conservation Committee that Fred Baldridge had engaged in a scheme or device to evade the $5,000 maximum annual payment limitations of the soil bank program. 21 Fed. Reg. 6296, 8793 (1956). The Committee had ordered Baldridge to refund monies received from lands placed in the soil bank by Baldridge and his relatives. The district court and the court of appeals affirmed (Pet. Att. 1 and 2).

Briefly summarized, the scheme was as follows (See Pet. Att. 1, pp. 3-8). One Draper agreed to sell his farm to Baldridge. The farm was divided into seven parcels. Baldridge bought one parcel, five of his relatives each formally purchased a parcel, and Draper retained the other parcel. The deeds to each parcel were placed in escrow, to be delivered to Baldridge when the land was paid for, in consideration for Baldridge conforming the land for entry into the soil bank (a task requiring little effort). The buyers were to pay Draper solely from the proceeds of soil bank payments made by the government. The notes they signed specifically precluded Draper from collecting deficiency judgments from them in the event of default.

The purpose of the scheme was to evade the $5,000 annual maximum payment limitation on any one producer established by regulation pursuant to the Act. 7 C.F.R. 750.294i (1963 rev.). Had the scheme succeeded, Baldridge would have become the owner of the entire Draper farm, the purchase price having been paid entirely by the government under the soil bank program. Baldridge would thus have received the benefit of soil bank payments well in excess of the maximum limitations.

When the scheme was discovered, the local Committee requested an investigation by the Agriculture Department. As a result of that investigation, the State Committee, after administrative proceedings held pursuant to 7 U.S.C. (1964 ed.) 1831(d), cancelled the soil bank contracts and ordered refund of the monies paid thereunder. The Committee determined that Baldridge had employed a scheme or device to evade the maximum payment limitation and that the contracts were void from their inception. The Committee further determined that the scheme was for the benefit of

Baldridge alone, and that he therefore was responsible for refunding the amounts paid to all participants in the scheme.

Baldridge and two participants in the scheme brought an action in the district court for *de novo* review of the Committee determination. The district court affirmed, finding that Baldridge had obtained the soil bank payments by fraud. The court of appeals affirmed.

1. The rulings of both courts below that Baldridge engaged in a scheme or device to evade the maximum payment limitations of the soil bank program are correct, and do not warrant further review. The decisive issue here is factual—whether Baldridge engaged in such a scheme. This issue was determined adversely to petitioner by the State Committee, the district court upheld that determination after a trial *de novo,* and the court of appeals affirmed. Indeed, there could have been no purpose for the complicated scheme other than evasion of the maximum payment limitations.

2. Petitioners' sole legal argument—that under New Mexico law the holder of record title must be considered the beneficial as well as legal owner of property, and therefore the strawmen holding bare legal title were the actual "producers" rather than Baldridge—presents only a question of state law. But whatever may be the New Mexico rule,[1] it has no application to this case because actions under the Soil Bank Act are governed by federal law. *Clearfield Trust Co.* v. *United States,* 318 U.S. 363; *United States* v. *Sommerville,* 324 F. 2d 712 (C.A. 3); *Reimann* v. *United States,* 315 F.

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[1]The distinction between beneficial and legal ownership is recognized in New Mexico. See, *e.g., Mesich* v. *Board of County Commissioners,* 46 N.M. 412, 129 P. 2d 974; *Gregg* v. *Gardner,* 73 N.M. 347, 388 P. 2d 68.

2d 746 (C.A. 9). Regardless of the state characteriza
of Baldridge's interest in the Draper farm, the Act
quires a refund of payments if the entire series of tr
actions by Baldridge manifests a scheme to evade
maximum payment limitations of the soil bank prog

Contrary to petitioner's contention, this decision
not conflict with *United States* v. *Lazy FC Ranch,*
F. 2d 985 (C.A. 9). There the court rejected the gov
ment's contention that partners in a ranch had eng
in sham transactions to evade the payment limita
because the partners had relied upon the advice
encouragement of a local government official in ma
the arrangements. Here, however, the government wa
aware of the scheme during its first eight years an
soon as the government learned of it, it took expedi
action to recover monies paid in violation of its regulati

It is therefore respectfully submitted that the pet
for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

MAY 1974.

JUL 1 1974
MICHAEL RODAK, JR., CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 73-1361

FRED BALDRIDGE, TRAVIS W. TAYLOR and HERMAN D. TERRY,

Petitioners,

vs.

JOHN R. HADLEY, J. D. MONTOYA and ED GARY, individually and as members of THE NEW MEXICO STATE AGRICULTURAL STABILIZATION and CONSERVATION COMMITTEE; and CLIFFORD M. HARDIN as Secretary of Agriculture of the United States, COMMODITY CREDIT CORPORATION,

Respondents,

and

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR REHEARING

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SUPREME COURT OF THE UNITED STATES

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Respondents,

and

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR REHEARING

Petitioners present their petition for a rehearing of this Court's order dated May 28, 1974, denying the petition for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit, a suspension of the effect of the denial and leave until July 1, 1974, to file this petition having been granted by Mr. Justice Byron R. White on June 4, 1974.

GROUNDS FOR REHEARING

1. REPLY TO THE MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION. The government characterizes the issues here as being "factual". Nothing could be farther removed from the truth than that. There has never been any substantial dispute about the facts. The deeds from Draper, the seller, to the purchasers, their notes and mortgages to Draper, the respective escrow contracts with Fred Baldridge, the escrowed deeds, the subsequent releases by Draper, and delivery of the deeds when the C.R.P. contracts were wrongfully terminated, have not been attacked by the government. These careful steps taken by the participants to stay strictly within the regulations, 7 C.F.R. §750.150, et seq., stand completely unimpeached and, in truth, not controverted. The issues here are strictly those of law. When the facts are undisputed, a determination of fraud is a question of law. 37 Am.Jur.2d, Fraud and Deceit, §19, p.44; 37 C.J.S., Fraud, §123, p.450. The government states that there was no purpose for the

"complicated scheme" other than to evade the maximum payment limitation. The conveyancing had here was not complicated, but rather elementary, and the purpose was to insure that there were no violations either of the regulations or of the purpose of the Soil Bank Act. Fred Baldridge never received more than $5,000 in any one year from the Department of Agriculture. To state otherwise is to foster on this Court a deliberate untruth.

The government next takes the position that New Mexico law of real property is not a factor. Petitioners rely upon Mosley v. Magnolia Petroleum Co., 45 N.M. 230, 114 P.2d 740 (1941), which is a famous case in New Mexico jurisprudence holding that a deed placed in escrow to be delivered upon a condition subsequent will be given effect as of the date of the final or effective delivery. This is the law everywhere, and were there a federal common law as to real property, petitioners believe that such would be the decision of this Court. 48 A.L.R. 405; 54 A.L.R. 1246; 117 A.L.R. 69; 28 Am.Jur.2d, Escrow, §10, p.15; 30A C.J.S., Escrow, §9, p.993; 26 C.J.S., Deeds, §40, p.670; Restatement Law of Property, §9, Comment c., Id. §153, Comment on Subsection (1)c. In support of its statement that actions under the Soil Bank Act are governed strictly by federal law, whatever that may be, the government cites three (3) cases, to-wit: Clearfield Trust Co. v. United States, 318 U.S. 363, 63 S.Ct. 573, 87 L.Ed. 838 (1943); United States v. Sommerville, 324 F.2d 712 (Cir. 3, 1967);

and Reimann v. United States, 315 F.2d 746 (Cir. 9, 1963). None of these even remotely support the statement for which cited.

Clearfield Trust Co., supra, confined itself to the law merchant, i.e., could there be recovery a year and a half after negotiation on an indorsement forged on a government check contrary to Pennsylvania law. This case on its own facts is of dubious validity now in view of the fact that 49 of the 50 states have adopted the Uniform Commercial Code which effectively resolves the issue uniformly. But at the least Clearfield has nothing to do with real property.

Sommerville, supra, similarly falls into the commercial law category as it concerned cattle sold by an auctioneer which were subject to a security agreement in favor of the Farmers Home Administration. The Tenth Circuit from which the case at bar originates, reversed itself, or at the least retracted, in Mitchell v. Sheppard Mall State Bank, 458 F.2d 700 (Cir. 10, 1972), which held that the Uniform Commercial Code provisions of state law are the appropriate sources of federal law. Sommerville cannot possibly be authority for any principle involved in the case at bar.

Reimann v. United States, supra, stands for precisely the opposite of what the government contends. It concerned the validity of a Soil Bank Contract executed by a husband as to lands in Idaho which is a community property state. The wife did not join

in executing the contract, which failure the husband contended made the contract void. The Ninth Circuit stated:

> "But we need not, and do not, decide whether we should adopt, for the purpose of this decision, the law of Idaho as being the federal law in relation to what authority a husband has, and to what constitutes an encumbrance . . . . We assume, for the purposes of this case, that Idaho law should be the standard we adopt, since this is appellant's position."

The court then went on to decide that the husband under Idaho law could validly enter into a Soil Bank Contract without the wife joining. In all fairness, Reimann supports petitioners.

The government should not be permitted to cite authority that is so wide of its mark. Of course, the excuse for so doing is that there is not a single case from this Court which holds that long standing principles of state real property law can be ignored notwithstanding a federal interest. U.S. v. Little Lake Misere Land Company, Inc., 412 U.S. 580, 93 S.Ct. 2389 (1973); U.S. v. Burnison, 399 U.S. 87, 70 S.Ct. 503, 94 L.Ed. 675 (1950); C.I.R. v. Estate Bosch, 387 U.S. 456, 87 S.Ct. 1776, 18 L.Ed.2d 886 (1967). Petitioners are unable to find in the instant case moral grounds necessitating so drastic a departure from what has so long been settled law.

The decision in United States v. Lazy F C Ranch, 481 F.2d 985 (Cir. 9, 1973), is brushed off by the government as not being in conflict with the opinion of the Tenth Circuit in the case at bar on the ground that the partners had relied on the advice of the county A.S.& C.S. manager in making the leases which quadrupled their collective income from the Acreage Reserve Contracts. Amazingly, the government there stipulated that there was no "scheme or device". This got the A.S.& C.S. manager off the hook, so to speak, despite the fact that the partners were trying to maximize their income from the contracts. Notwithstanding, the partners admittedly received monies in excess of the maximum payment limitations. The Ninth Circuit simply held that the government had received full benefits from the land taken out of production and the partners had lost their profits from farming, so that there was no good reason for requiring them to return the monies received just because those monies exceeded the maximum payment limitation. The prohibition is against receiving more than $5,000 from the contracts in any one year. Whether received as the result of a "scheme or device" is immaterial.

It is shocking to note that Fred Baldridge never did receive payments exceeding the maximum limitation, but is being required to return payments admittedly received by others anyhow. Further, Fred Baldridge never even tried to maximize the annual payments to himself. Every effort was exerted, and petitioners think successfully, to

do just the opposite. If there was no "scheme or device" in Idaho, there can be none in New Mexico. There is no rationale that can equate ownership of the land after the Soil Bank Contracts are terminated as being the same thing as receiving more than $5,000 per year. It was not the parties intent for any to receive more than the regulations allowed. Further, they didn't. Finally, the government has not been damaged just as it was not damaged in Lazy F C Ranch, supra.

The disposition of this property after the conclusion of the Soil Bank Contracts cannot in any sense be a concern of the government. For Baldridge to be treated as others have not, would require review of every Soil Bank Contract that was made which is an administrative impossibility. The results in this case and Lazy F C Ranch, supra, are irreconcilable. Government application of what it thinks is the law mocks every "American ideal of fairness".

2. THE TENTH CIRCUIT CANNOT CONVERT THIS CASE INTO AN ACTION TO REFORM WRITTEN DOCUMENTS. The government approach has been that notwithstanding the documents that were executed, they are meaningless, ineffective, worthless, void, and the government, with or without documents, will determine what the parties meant and simultaneously determine the legal effect of this implied meaning. Not argued in this Court was the evidentiary side of the issues from the standpoint of both federal and state law. In order to

achieve the result had by the Tenth Circuit it is necessary to set aside or else hold void or otherwise rewrite the following written instruments between the parties:

(1) Warranty Deeds:

(a) Draper to Taylor. (Ex. 27).
(b) Draper to Henderson. (Ex. 29).
(c) Draper to Adams. (Ex. 31).
(d) Draper to Henry E. Baldridge, Jr. (Ex. 33).
(e) Draper to Terry. (Ex. 35).
(f) Draper to Fred Baldridge. (Ex. 37).

(2) Mortgages:

(a) Taylor to Draper. (Ex. 40).
(b) Henderson to Draper. (Ex. 41).
(c) Adams to Draper. (Ex. 42).
(d) Henry E. Baldridge, Jr. to Draper. (Ex. 43).
(e) Terry to Draper. (Ex. 44).
(f) Fred Baldridge to Draper. (Ex. 45).

(3) Promissory Notes:

(a) Taylor to Draper. (Ex. 13).
(b) Henderson to Draper. (Ex. 14).
(c) Adams to Draper. (Ex. 15).
(d) Henry E. Baldridge, Jr. to Draper. (Ex. 16).
(e) Terry to Draper. (Ex. 17).
(f) Fred Baldridge to Draper. (Ex. 18).
(g) Draper to Fred Baldridge. (Ex. 20).

(4) Contracts With Escrowed Deeds:

(a) Taylor and Fred Baldridge. (Ex. 21).
(b) Henderson and Fred Baldridge. (Ex. 22).
(c) Adams and Fred Baldridge. (Ex. 23).
(d) Henry E. Baldridge, Jr. and Fred Baldridge. (Ex. 24).
(e) Terry and Fred Baldridge. (Ex. 25).
(f) Draper and Fred Baldridge. (Ex. 26).

(5) Conservation Reserve Contracts between Department of Agriculture and:

(a) Taylor. (Ex. 142).
(b) Henderson. (Ex. 3).
(c) Adams. (Ex. 5).

(d) Henry E. Baldridge, Jr. (Ex. 6 & 7).
(e) Terry. (Ex. 8).
(f) Fred Baldridge. (Ex. 9).
(g) Draper. (Ex. 10 & 11).

This requires reformation of 26 instruments, i.e., 5 warranty deeds, 5 mortgages, 5 notes, 6 contracts, between the parties, and 5 Conservation Reserve Program contracts by substituting the name of Fred Baldridge wherever the names of Taylor, Henderson, Adams, Henry E. Baldridge, Jr., and Terry appear. The magnitude of the lower courts' broad brush cover-up of 26 instruments, all of which were stipulated into evidence, is unbelievable.

The Tenth Circuit in most ungentlemanly words, and petitioners think in gross violation of the language and the spirit of the Code of Judicial Conduct, stated:

> "We are of the opinion that the trial court was eminently correct in ignoring the forms which were erected and recognizing the true facts. Counsel for Baldridge argues that this was all legal and therefore non-fraudulent. We disagree. The arrangement has the evidences of a devious sham which was designed to deceive. Its elaborate legal structure, while giving it the look of legality, does not bear scrutiny." (Emphasis writer's). Petition For Writ of Certiorari, Attachment 2, p.11.

The implications of this quotation are startling and fearsome. It projects a judicial tyranny which is not only incomprehensible but intolerable in American jurisprudence. No court, federal or state, should be permitted to let such outrageous theories stand as law in this nation. Authority from this Court is not lacking on the meaning and effect to be given written instruments.

In Howland v. Blake, 97 U.S. 624, 94-97 S.Ct. 1027, 24 L.Ed. 1027 (1878), in a suit to reform a deed, this Court said:

> "where a written instrument is sought to be reformed . . . ." "the burden rests upon the moving party of overcoming the strong presumption arising from the terms of a written instrument. If the proofs are doubtful and unsatisfactory, if there is a failure to overcome this presumption by testimony entirely plain and convincing beyond reasonable controversy, the writing will be held to express correctly the intention of the parties. A judgment of the court, a deliberate deed or writing, are of too much solemnity to be brushed away by loose and inconclusive evidence." (Emphasis writer's).

Singularly, there is no testimony or evidence at all that the written instruments were intended by the parties to mean anything other than what they said.

On the contrary, the parties meticulously followed the text of the instruments. The language of Howland v. Blake, supra, was adopted in toto in Northwestern Mutual Life Insurance Company v. Nelson, 103 U.S. 544, 102-105 S.Ct. 437, 26 L.Ed. 436 (1880), which stated:

> "Where a deed or mortgage, regular in appearance, and bearing the genuine signature and duly certified acknowledgment of the grantor or mortgagor is attached, the evidence to impeach it should be clear and convincing." (Emphasis writer's).

Not only did the Tenth Circuit deliberately ignore the deeds, mortgages, notes, contracts, and releases, all contrary to established precedent, but by doing so it elevates a lawful and simple transaction into fraud. This is to say that the lower court presumed fraud. This cannot be done. Kempner v. Churchill, 75 U.S. 362, 8 Wall. 362, 74-77 S.Ct. 461, 19 L.Ed. 461 (1869).

In Carpenter v. The Providence Washington Insurance Company, 45 U.S. 185, 4 How. 185, 42-45 S.Ct. 931, 11 L.Ed. 931 (1846), where an insured alleged fraud in his insurer not endorsing on his policy the fact of procurement of other insurance, this Court said as to proof required of fraud:

> "and so grave a charge as fraud, by very satisfactory auxiliaries . . . that is by evidence which is 'irrefragable,' and not open 'to opposing presumption.'"

The evidence to prove fraud is considerably more than that required by a mere preponderance of the evidence. Proof of fraud must be made by "clear evidence". Oriel v. Russell, 278 U.S. 358, 49 S.Ct. 173, 73 L.Ed. 419 (1929).

It is noted that the trial court, without reason, refused to give credence to Fred Baldridge's unimpeached and uncontradicted testimony that he offered all of the documentation to Mr. Joe Peterson, the Lea County, New Mexico, A.S.& C.S. Manager, who refused to look at them. This was improper under both state and federal law. Rowdon v. Stanley, 455 F.2d 482 (Cir. 10, 1972); Aragon v. Boyd, 80 N.M. 14, 450 P.2d 614 (1969).

Petitioners have looked long and hard to try to find some precedent that supports the lower courts' determination that the deeds, mortgages, notes, contracts, and releases are a "sham". The only case surfacing in this regard is one where a group of decedent's children brought suit to set aside a parent's deed to another child where in Gregory v. Lloyd, 284 F.Supp. 264 (D.C. Fla., N.D., 1968), that court said:

> "The deed in this case was challenged also on the ground

> that it was a sham deed. It is clear that the deed was, in fact delivered, so that it could not under any circumstances, be a sham deed. For the deed to be a sham there would have to be evidence that the parties did not intend for it to be effective as a duly delivered deed conveying title, and no testimony or evidence indicates that such was the case." (Emphasis writer's).

It is not arguable but that the parties performed fully in all respects according to the requirements of their deeds, mortgages, notes, and contracts. It is equally obvious that each intended these instruments to be effective according to their texts. Where, then, is there any basis for the Tenth Circuit to messiah-like abrogate the parties' plain agreements under which each had fully performed? More especially where is there any basis for the Tenth Circuit to attach the stigma of fraud and deceit as if the documents had never existed? There is in the Tenth Circuit's opinion a lack of competence in judgment that provokes a justifiable cynicism. There has not been one single element of fraud proven as it is known to the law. Petitioners have discussed this at length in their Point V of the Petition For Certiorari, p.30. For the Tenth Circuit's decision to stand in the face of and contrary to not only its own precedent but also the precedent of this Court, would be a tragedy to the law as it is known and practiced in this country.

3. THERE IS NEITHER STATUTORY, REGULATORY, NOR CASE LAW CREATING A LEGAL LIABILITY ON FRED BALDRIDGE TO RETURN MONIES WHICH HE NEVER RECEIVED. Petitioners in their Point III, at page 23 of the Petition For Certiorari, dealt with one aspect of this issue, that is, to permit recovery of monies not received by Fred Baldridge is to create a new substantive legal liability without legislative aid contrary to U.S. v. Standard Oil Co. of California, 332 U.S. 301, 67 S.Ct. 1604, 91 L.Ed. 2067 (1947). But aside from this, the administrative interpretations forestall any such liability.

A. USE OF SOIL BANK ACT PAYMENTS TO PURCHASE DRAPER'S LAND WAS LEGAL AND APPROVED BY THE DEPARTMENT OF AGRICULTURE AND CONGRESS.

The basis of the government's contention is that the C.R.P. paid for the land. Fred Baldridge only bought one section of land with C.R.P. monies. Taylor, Henderson, Adams, Henry E. Baldridge, Jr., and Terry bought their own land. There is no question but that the C.R.P. payments paid for the land purchased by the six. The C.R.P. payments bought practically all the farm land that was sold in New Mexico during this period. One has to be extremely naive to think that the Department of Agriculture thought otherwise. It is this lingering naivete which apparently directed the lower courts to disregard 26 written instruments and presume fraud. This erroneous conclusion is wholly dispelled by what the Department of

Agriculture and the Congress actually approved. There simply is no moral issue involved as the lower courts would have one believe.

The H.R. Hearings Before the Subcomm. of the Comm. on Appropriations, 86th Cong., 1st Sess. (1960), and 85th Cong., 2nd Sess. (1959), specifically approved those sales to even family members with vendor liens or mortgages back to the seller, usually a close relative. The regulations, 7 C.F.R. §750.170, shown in Appendix to Petition For Certiorari at page B-65, specifically provided for the assignment of C.R.P. payments without limitation as to purpose. Petitioners see no moral violation in this approved practice. If the Department of Agriculture approves such and the Congress impresses its approval on it also, how can the courts arbitrarily label it fraud?

Further, the H.R. Hearings, supra, are replete with examples that you did not have to be a career farmer to qualify as a "producer" under the regulations. In order to be a "producer" all you had to be was an "owner or landlord" under 7 C.F.R. §750.150(q). Equally, the regulations provided that individuals having family relationships could be considered as "separate producers" under 7 C.F.R. §750.164(b)(5). In fact this situation of family relationship was one of the main thrusts of the H.R. Hearings, supra. Any lawyer who practiced in New Mexico's rural area drafted deeds, notes, and mortgages by the score between parents and their children and grand-

children. Petitioners are certain that not one lawyer had the remotest idea that he was committing a moral sin by so doing. But if morality is an issue, as the Tenth Circuit would have you believe, then the respective County Agricultural Stabilization and Conservation Service Offices of the Department of Agriculture were accessories to the fact because they knew of all these family relationships and the circumstances of each purchaser or donee, i.e., whether career farmers or not, and approved every single C.R.P. contract so presented. So did the Lea Co. A.S. & C.S. office in the instant case. The massive scale upon which this was done can best be illustrated by what occurred in Fred Baldridge's home county, Curry County, New Mexico, where 677 C.R.P. contracts were executed out of 1,100 farms, constituting 35% of the county's total cropland. Petition For Certiorari, Attachment 10, page 361. If the Department of Agriculture was wrong in promulgating its regulations so as to permit anyone to buy land with C.R.P. payments, then it was wrong on literally thousands of C.R.P. contracts. Furthermore, if it was wrong, Congress clearly acquiesced in it. That one today thinks it not a wise policy, does not make it immoral or illegal at a time some fifteen years earlier when the economic condition of the farmer was so vastly different. Petitioners cannot reconcile the Tenth Circuit's determination with this Court's decision in Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 93 S.Ct. 2080 (1973), and Red Lion Broadcasting Co., Inc. v. F.C.C., 395 U.S. 367, 89 S.Ct. 1794, 23 L.Ed.2d 371 (1969),

which held that the administering agency's execution of a statute should be followed especially where Congress has refused to alter the administrative construction. Petitioners submit that the purchase of the land by Fred Baldridge and the five others was perfectly legal and without moral stigma of any sort whether or not the land was paid for with C.R.P. payments. To hold otherwise is to label thousands of American farmers as thieves, defrauders and swindlers. They were none of these, and it is shameful and derogatory for the Tenth Circuit to so imply.

B. ACQUISITION OF THE LANDS BY FRED BALDRIDGE.

Petitioners assert that the transaction between the five other purchasers and Fred Baldridge is entirely and necessarily separate and distinct from their respective acquisitions of the lands with C.R.P. payments. It is at this point that the logic, if any, of the lower courts falls apart. This was the most simple of transactions. After it was ascertained that the C.R.P. contracts would receive approval about one year after the delivery of the deeds, notes, and mortgages with Draper, the five entered into a contract with Fred Baldridge whereby he would make the land comply with the C.R.P. contracts, and when those C.R.P. contracts were completed, the land would become his by delivery to him of a warranty deed which was escrowed with the contract. It should be remembered that at this time these lands were heavily encumbered with a first mortgage of some $40,000 to

Connecticut Mutual Life Insurance Co., a second mortgage of $61,058.99 to Farmers Home Administration, a third mortgage to Amos Harper for $56,372.00, and a fourth lien to Commodity Credit Corporation for between $4,000 and $5,000, all of which totalled $161,430.99. All of these mortgages were prior to the purchasers' mortgages to Draper which is why the purchasers' mortgages to him provided for no deficiency judgment. Further, at this time the C.R.P. contracts were not approved and payments on them were dependent on appropriated money, and there was great question in the farmers' minds whether the C.R.P. payments would be made.

In order for the trial court to arrive at a result of liability on Fred Baldridge for all payments received and spent by five different people, it took some extraordinary maneuvering. The trial court did this by calling the five purchasers "agents" of Fred Baldridge. There is not one word concerning agency in the evidence. Not a single witness testified that in the purchase of these lands that Fred Baldridge was their agent, and there is no documentary evidence to support any such conclusion. Each of the purchasers received a warranty deed from Draper, and executed his note and mortgage to Draper and performed thereunder. Even had there been a secret or unexpressed intention that the others were agents of Fred Baldridge, the words used in the deed control and cannot be orally shown to mean otherwise. Sharpe v. Smith, 68 N.M. 253, 360 P.2d 917 (1961); Westover v. Harris, 47 N.M. 112, 137 P.2d

771 (1943). These deeds, notes, and mortgages mean exactly what they say, so that each purchaser became the owner. About a year later they executed a contract with Fred Baldridge and escrowed a deed to be delivered at a date after the respective C.R.P. contracts terminated, none of which contracts can possibly be subject to construction as there is no ambiguity. Moran v. Prather, 90 U.S. 492, 23 Wall. 492, 90-93 S.Ct. 121, 23 L.Ed. 121 (1874); Major v. Bishop, 462 F.2d 1277 (Cir. 10, 1972). It was not within the province of the lower courts to interpolate what the parties to these unambiguous instruments have not themselves stipulated or intended. Ingle v. Jones, 69 U.S. 1, 2 Wall. 1, 66-69 S.Ct. 762, 17 L.Ed. 762 (1864); State of Maryland v. Baltimore & Ohio Rr. Co., 89 U.S. 105, 22 Wall. 105, 86-89 S.Ct. 713, 22 L.Ed. 713 (1874); Woodson v. Lee, 73 N.M. 425, 389 P.2d 196 (1963); Hopper v. Reynolds, 81 N.M. 255, 466 P.2d 101 (1970). What the lower courts are doing is to make a new contract for the parties which is different in all vital particulars from that which they actually made and intended. Gavinzel v. Crump, 89 U.S. 308, 22 Wall. 308, 86-89 S.Ct. 783, 22 L.Ed. 783 (1875); Lawber v. Bangs, 69 U.S. 728, 2 Wall. 728, 66-69 S.Ct. 768, 17 L.Ed. 768 (1864).

The only conclusion to all of this is that there is no basis in law or fact, first, that the original purchasers from Draper were in any way tainted with fraud because the land was paid for with C.R.P. payments, second, that the acquisition of these lands by Fred Baldridge from the purchasers was according to their

respective contracts, all of which were perfectly open and aboveboard and in accordance with the law of New Mexico real property, and third, that the lower courts cannot disregard 26 simple written instruments to determine fraud.

The absurdity of the lower courts' holding is seen in the result. They are saying that if predecessors in ownership purchase land with C.R.P. payments, as they could legally do, nonetheless those payments will be treated as if received by the predecessors' grantee under another C.R.P. contract at the same time as received by the predecessor in ownership, so as to make the grantee exceed the $5,000 maximum annual payment limitation. This reasoning is ridiculous because there is no end to it. It would make anyone who at one time had a C.R.P. contract in violation of the maximum payment limitation if he had acquired land that someone else had bought with C.R.P. payments. In contrast, we know that parts of farms were sold and C.R.P. payments were assigned to the seller to pay the note and mortgage, while at the same time the seller had a C.R.P. contract on land retained yielding him the maximum $5,000 per year, yet this is held not to violate the maximum payment limitation. (H.R. Hearings, supra). In truth, the latter situation is definitive of the purpose of the $5,000 maximum annual payment limitation in that such limitation must apply only to C.R.P. contracts executed by a single owner, otherwise the seller with a C.R.P. contract on lands retained in the note and mortgage situation would be exceeding

the maximum payment limitation. Under the weak theory applied in the instant case, if one owner had a C.R.P. contract yielding $5,000 per year, and he received from any source money or anything that was the result of another C.R.P. contract, he would have exceeded the $5,000 maximum annual payment limitation. This was not and cannot be.

You cannot predicate fraud on supposition or presumption. Fraud is a specific concept and not nebulous or fanciful or imagined. In this case it is defined by Pacific Royalty Co. v. Williams, 227 F.2d 49 (Cir. 10, 1956), c.d., 351 U.S. 951, 76 S.Ct. 847, 100 L.Ed. 1474, which was adopted in Sauter v. St. Michael's College, 70 N.M. 380, 374 P.2d 134 (1962), by the New Mexico Supreme Court. There must be a false representation of a material fact which at the very most could not be more than an unknowing opinion expressed as to a matter of ownership in the instant case, which expression is wholly insufficient under both federal and state law. State Farm Mutual Automobile Insurance Company v. Petsch, 261 F.2d 331 (Cir. 10, 1958); Agnew v. Landers, 59 N.M. 54, 278 P.2d 970 (1955). There must be knowledge of the false fact when made which is lacking both as to its characterization as fact when it was legal opinion based upon counsel's advice and obviously lacking as to knowledge. There must be an intent to deceive which could not possibly exist when none of the parties knew, or believe today, that a false representation was made. The lower courts apparently think that because the C.R.P. payments paid for

the land of the six purchasers that this created an evil motive. That it does not and cannot is quite apparent from the H.R. Hearings, supra. As to the last required element, reliance and damage, the A.S. & C.S. was perfectly justified in relying on the recorded deeds and mortgages securing the notes because such were true in fact and law. As to damage, there was none here just as there was none in U.S. v. Lazy F C Ranch, 481 F.2d 985 (Cir. 9, 1973), because the land was taken out of production and the government received its quid pro quo. There is no rationale whereby fraud can be made out of these transactions.

A fortiori, if there is no fraud, how can Fred Baldridge be held liable for some $300,000 which he never received? There was nothing illegal or immoral in Taylor, Henderson, Adams, Henry E. Baldridge, Jr., and Terry purchasing these lands with C.R.P. payments. Does it become a fraud when they desire to give this land to Fred Baldridge after termination of the C.R.P. contracts some ten years later? If so, where and upon what basis do you find the elements required to prove fraud? Is it the fact that Fred Baldridge ends up ten years later the beneficiary of the largess of his relatives? Where is there anything that even distantly smacks of the idea that there was any restriction on his relatives gifting the land for which they no longer had use or desired to retain to Fred Baldridge? There could be no fraud unless it was fraudulent for them to make the original purchase with C.R.P. payments. That such original

purchases were legal and valid cannot be disputed. One can only conclude that there can be no liability on Fred Baldridge for monies not received by him which in part went into the purchase of these lands by the others. This is fair in all respects to the government because all it wanted was to have the land removed from production as it was. The fact that his relatives wanted him to have the land after termination of the C.R.P. contracts cannot be a factor because he has not misused the purpose of the Soil Bank Act in any respect. That the lower courts do not like that statute or the regulations pursuant to it, still is no basis for a finding of fraud. Surely counsel in drawing these instruments should not have to speculate on whether this court or that court will or will not like it. Such instruments are drawn in accordance with accepted legal principles of the state where the land is located. It cannot be done in any other way, and no one with any experience in legal practice would think of doing it any other way. This is a clear case of mistaken law and poor judgment by the lower courts. The magnitude of the matter alone deserves the attention of this Court.

CONCLUSION

Petitioners recognize that they are but a few small fish in a pond without limit. They further recognize that this Court has before it at all times issues of the law and the Constitution that in many instances admit of no complete solution. It is perhaps true that this

Court is just too occupied with wholly national issues that it cannot give any substantial time to insure that there will not be an economic crucifixion of an upright and decent man like Fred Baldridge. But the fact is, as all old lawyers know, that the various Circuit Courts are not nearly as careful and much less infallible than they would have you believe. Sometimes their errors are harmless but the result is close to right. Other times, as here, their errors are gross and the result so enormously awry, that there is a responsibility on this Court, despite its huge workload, to do something affirmative to get the case back on the track.

It is petitioners suggestion to this Honorable Court that this case, with or without grant of the certiorari, be remanded to the Tenth Circuit for reconsideration on the principles discussed in Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 93 S.Ct. 2080 (1973), and Red Lion Broadcasting Co., Inc. v. F.C.C., 395 U.S. 367, 89 S.Ct. 1794, 23 L.Ed.2d 371 (1969), in the light of H.R. Hearings Before the Subcomm. of the Comm. on Appropriations, 85th Cong., 2nd Sess. (1959), and 86th Cong., 1st Sess. (1960), that the Tenth Circuit be directed to determine all issues of real property law in accordance with that had in New Mexico, and that the issues of fraud, if such remain after decision on the aforegoing, be determined in accordance with existing law of the Tenth Circuit as shown in Pacific Royalty Co. v. Williams, 227 F.2d 49 (Cir. 10, 1956), c.d., 351

U.S. 951, 76 S.Ct. 847, 100 L.Ed. 1474, which was adopted in New Mexico in Sauter v. St. Michael's College, 70 N.M. 380, 374 P.2d 134 (1962).

By this Court assuming a limited jurisdiction, not involving a measurable expenditure of time, there should be a good chance that the Tenth Circuit would get back on the track without its usual stubbornness and decide this case based upon proper legal direction without emotional involvement. The huge amount of money, in excess of $300,000, is significant and not a usual thing even in this Court. But the stigma attaching to Fred Baldridge and his family of an adjudication of fraud is simply unbearable. There is no better hardworking farmer and stockman in this county than he. Counsel for petitioners believe that the opinion of the Tenth Circuit reflects adversely on their ethics and without any justification whatsoever. Adding it all up, the decisions of the lower courts are unconscionable from any direction. Petition for certiorari or remand for reconsideration is merited.

Respectfully submitted,

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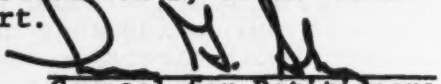
By:

CERTIFICATE OF COUNSEL

I, Lynell G. Skarda, counsel for the above-named petitioners, do hereby certify that the foregoing Petition For Rehearing on Petition For Writ of Certiorari is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 58, subdivision 2, of the Rules of this Court.



Counsel for Petitioners

CERTIFICATE OF SERVICE

I, Lynell G. Skarda, one of the attorneys for the Petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 26th day of June, 1974, I served copies of the Petition For Rehearing on Petition For Writ of Certiorari on the several parties thereto, as follows:

1. On The Solicitor General, Department of Justice, Washington, D.C., 20530, by mailing three (3) copies in a duly addressed envelope, with airmail postage prepaid.

2. On Robert E. Kopp and Michael H. Stein, Appellate Section, Civil Division, U. S. Department of Justice, Washington, D.C., 20530, by mailing three (3) copies in a duly addressed envelope, with airmail postage prepaid.

LYNELL G. SKARDA